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1 UNITED STATES DISTRICT COURT
SOUTHERN DISTRICT OF NEW YORK

2 -----x
UNITED STATES OF AMERICA

3 v.

13 CR 351 (JSR)

4 JOVER NARANJO and
5 LUPERIO NARANJO, SR.,

6 Defendants.

7 -----x

New York, N.Y.
November 20, 2013
9:10 a.m.

9 Before:

10 HON. JED S. RAKOFF,

11 District Judge

12 APPEARANCES

13 PREET BHARARA

United States Attorney for the
Southern District of New York

14 BRIAN JACOBS

15 BRENT WIBLE

Assistant United States Attorney

16 DONALDSON CHILLIEST & McDANIEL

Attorney for Defendant Jover Naranjo

17 XAVIER DONALDSON

18 LAW OFFICE OF JOHN BURKE

Attorney for Defendant Luperio Naranjo, Sr.

20 ALSO PRESENT: TIINA SISAS, U.S. Department of Labor

DENA MILLMAN, Spanish Interpreter

ALEX WIEDER, Spanish Interpreter

22 DAVID MINTZ, Spanish Interpreter

MARCIA GOTLER, Spanish Interpreter

23 LUKE PHILLIPS, Paralegal Specialist, AUSA

DbkQnar1

1 (In open court; jury present)

2 MICHELLE LETTIRE, resumed.

3 THE COURT: Good morning, ladies and gentlemen. We
4 are actually more or less starting on time. I know it's
5 shocking, but bear up.

6 Counsel, we are ready to continue.

7 MR. DONALDSON: Yes, sir.

8 CROSS-EXAMINATION

9 BY MR. DONALDSON:

10 Q. Good morning, ma'am.

11 A. Good morning.

12 Q. I am going to need you to speak up into that microphone so
13 the last person in the back of the jury box can hear you. All
14 right?

15 A. Good morning.

16 Q. There you go. Good morning. Good morning.

17 You work for Lettire, correct?

18 A. Yes.

19 Q. You said you worked there for 30 years?

20 A. Yes.

21 Q. And your educational background is what?

22 A. Two years of college.

23 Q. It would be fair to say this is a family business, correct?

24 A. Yes.

25 Q. It's owned by your two brothers?

DbkQnar1

Lettire - cross

1 A. Yes.

2 Q. What are their names?

3 A. Nicholas and Gerard.

4 Q. Which title does Nicholas have?

5 A. President.

6 Q. And Gerard is?

7 A. Vice-president.

8 Q. And it's called Lettire Construction?

9 A. Corp.

10 Q. Lettire Construction Corporation. And the company has, I
11 guess, construction projects all over New York City. Would
12 that be fair to say?

13 A. Yes.

14 Q. Currently five, ten projects around the city?

15 A. Yes.

16 Q. The Hobbs Ciena Project, would that be considered a
17 multimillion dollar project?

18 A. Yes.

19 Q. If you recall, what was the contract between -- the
20 contract amount between Lettire and Ciena?

21 A. Approximately 87 million.

22 Q. 87 million?

23 A. Yes.

24 Q. So Lettire was given 87 million to do this project on 100th
25 Street between -- on Third Avenue; is that correct?

DbkQnar1

Lettire - cross

1 A. 100th and 102nd between First and Second.

2 Q. Does the Hobbs Ciena contract regarding the development
3 between 100th and 102nd Streets, Lettire had approximately ten
4 subcontractors. Would that be fair to say?

5 A. It was more than ten, I believe.

6 Q. More than ten subcontractors?

7 A. Yes.

8 Q. When we say subcontractors, we mean that Lettire
9 subcontracted out specific work to different companies,
10 correct?

11 A. Yes.

12 Q. So you may have a paving company or a plumbing company or
13 demolition company or different companies to do different
14 things for the project, correct?

15 A. Correct.

16 Q. And you had more than ten of those for that same project?

17 A. Yes.

18 Q. And Enviro was one of the subcontracts on this particular
19 Hobbs Ciena site?

20 A. Yes.

21 Q. Would it be fair to say that the relationship between
22 Enviro and Lettire for the Hobbs Ciena site began around
23 August 3, 2009?

24 A. Yes.

25 Q. So their work on that project -- when I say they --

DbkQnar1

Lettire - cross

1 Enviro's work on that project began either on or after
2 August 3, 2009, correct?

3 A. Yes.

4 Q. Now, in your direct you stated that your duties for Lettire
5 were to basically oversee the whole job?

6 A. No, payroll.

7 Q. Oversee the payroll?

8 A. Yes.

9 Q. What does that mean, oversee the payroll?

10 A. I had to collect payroll reports from the subs, review them
11 and submit them to HPD.

12 Q. So when you say you collect the payroll from the subs, you
13 mean all the subs related to the Hobbs Ciena Project, correct?

14 A. Yes.

15 Q. And you mentioned earlier that that would be more than ten
16 subs you collect the payrolls from, correct?

17 A. Yes.

18 Q. And that would be on a weekly basis, correct?

19 A. Yes.

20 Q. So it's fair to say on a weekly basis, you may collect, if
21 you have ten subs, on a weekly basis, at least ten payroll
22 records?

23 A. Yes.

24 Q. If it's more, if it's 15 subs, 15 payroll records?

25 A. Yes.

DbkQnar1

Lettire - cross

1 Q. Now, as part of your duties with the Lettire Construction
2 Corporation, you are familiar with the Davis Bacon Act,
3 correct?

4 A. Yes.

5 Q. And the Davis Bacon Act, based upon your familiarity, among
6 other things, relates to wages paid to employees, correct?

7 A. Yes.

8 Q. The Davis Bacon Act also relates too, among other things,
9 payrolls and basic records, correct?

10 A. Yes.

11 Q. You also, based upon your working at Lettire Construction
12 for these years, you're familiar with the CWHSSA law, correct?

13 A. Yes.

14 Q. That's from you information deals with compliance with
15 payment of overtime, correct?

16 A. Yes.

17 Q. Is that a yes?

18 A. Yes.

19 Q. You're also familiar with prevailing wage, correct?

20 A. Yes.

21 Q. You're familiar with prevailing wage because you've work on
22 prevailing wage issues for more than a decade. Would that be
23 fair to say?

24 A. Yes.

25 Q. More than 15 years probably, correct?

DbkQnar1

Lettire - cross

1 A. I'm not sure.

2 Q. Between ten and 15 years?

3 A. Yes.

4 Q. Now, there is a term -- a phrase called wage rates. Are
5 you familiar with that?

6 A. Yes.

7 Q. As another word for wage rates, some people call it wage
8 determination, correct?

9 A. Yes.

10 Q. Now, wage rates or wage determinations are -- if you don't
11 mind, could you open the book in front of you? Sir, could you
12 pull up page 42 on 101 in evidence, please. I'm going to ask
13 you to look at page 42 of Government Exhibit 101 that's in
14 evidence.

15 Now, I believe you identified yesterday page 42 of
16 Government Exhibit Government Exhibit 101 as wage rate or wage
17 determination. Is that fair to say?

18 A. Yes.

19 Q. And you're familiar with these kind of papers, right, these
20 documents?

21 A. Yes.

22 Q. Now, you were actually involved in the negotiation of
23 Enviro's contract with Lettire, correct?

24 A. No.

25 Q. And Enviro was a subcontractor, right?

DbkQnar1

Lettire - cross

1 A. Yes.

2 Q. And only before August 3, 2009, you didn't actually review
3 Enviro's contract, correct?

4 A. No.

5 Q. So you do not know whether or not these wage determination
6 rates were actually in Enviro's August 3, 2009 contract, do
7 you?

8 A. No.

9 Q. You had a meeting with the government on September 12,
10 2013, correct?

11 A. Yes.

12 MR. DONALDSON: May I have one second, please, your
13 Honor?

14

15 Q. In that meeting with the government, you were asked
16 questions regarding Lettire and Enviro, correct?

17 A. Yes.

18 Q. And in that meeting, you talked about the wage rates,
19 correct?

20 A. Yes.

21 Q. Did you not tell the government -- did you not tell the
22 government on September 12, 2013 that the wage rates were
23 attached to the contract?

24 A. Yes.

25 Q. But you didn't know that, correct? I'll ask you again.

DbkQnar1

Lettire - cross

1 You did not know whether or not the wage rates were attached to
2 Enviro's contract, did you?

3 A. No.

4 Q. But on September 12, 2013 while speaking to the government,
5 the AUSAs here, you told them that these wage rates were
6 attached to the contract. Did you not tell them that?

7 A. Yes.

8 Q. That was not true, correct? What you told the AUSA's on
9 September 12, 2013 was not true; isn't that correct?

10 A. Well, when it's prepared, they're put in the contract.

11 Q. Ms. Lettire, you did not see Mr. Naranjo's contract of
12 August 3, 2009, correct?

13 A. Correct.

14 Q. You do not know whether or not those wage rates were inside
15 that contract, did you?

16 A. No.

17 Q. So when you told the government in September 2013 that
18 those wage rates were inside that contract, you were lying to
19 them, were you not?

20 A. I wasn't lying.

21 Q. You were not being truthful, were you?

22 A. I don't know.

23 Q. As far as Lettire -- Lettire Construction was investigated
24 by the federal government, correct?

25 A. Yes.

DbkQnar1

Lettire - cross

1 Q. During that investigation, you were represented by an
2 attorney, correct?

3 A. Yes.

4 Q. Mr. Bahn or Bane what's his name?

5 A. Bahn.

6 Q. Mr. Bahn was your attorney during Lettire's -- while
7 Lettire was being investigated, correct?

8 A. Yes.

9 Q. When did that investigation begin, if you know?

10 A. I'm not sure of the exact date.

11 Q. Approximately.

12 A. December.

13 Q. I'm sorry? December 2009, correct?

14 A. Yeah.

15 Q. As part of that investigation, isn't it true that you
16 agreed Lettire Construction agreed with the Department of Labor
17 that Lettire did not include or incorporate by reference the
18 required Davis Bacon Labor Standards clauses and the CWHSSA
19 Labor Standards clauses and its contract for work on the Hobbs
20 Ciena Project with Enviro?

21 A. I don't know.

22 MR. DONALDSON: One second. Your Honor, may I
23 approach the witness with 3508-2?

24 MR. JACOBS: Judge, I would ask counsel lay a
25 foundation for this witness' knowledge of the terms of the

DbkQnar1

Lettire - cross

1 agreement he's discussing and whether she has any.

2 THE COURT: OK.

3 BY MR. DONALDSON:

4 Q. Ms. Lettire, you just said that you recalled that Lettire
5 Construction was being investigated by the Department of Labor,
6 correct?

7 A. Yes.

8 Q. And it was being investigated relating to the Hobbs Ciena
9 Project, correct?

10 A. Yes.

11 Q. And it was being -- Lettire Construction was being
12 investigated relating to Davis Bacon possible violations,
13 correct?

14 A. Yes.

15 Q. Involving Lettire's subcontractors and Lettire's own
16 employees, correct?

17 A. Yes.

18 Q. In fact, yesterday you testified that Lettire had to pay
19 back, I believe you said, \$3,000?

20 A. Yes.

21 Q. Related to this investigation, correct?

22 A. Yes.

23 Q. So you were aware that there was a settlement in this --
24 regarding Lettire and the Department of Labor related to an
25 investigation, correct?

DbkQnar1

Lettire - cross

1 A. Yes.

2 MR. DONALDSON: Your Honor, may I approach the
3 witness?

4 THE COURT: Well, we'll take it one question at a
5 time, but yes, you may. I hope someone has a copy for the
6 Court.

7 MR. DONALDSON: 3508-2.

8 THE COURT: Let me ask the witness, have you ever seen
9 this before?

10 THE WITNESS: I don't remember.

11 THE COURT: Pardon?

12 THE WITNESS: I don't know.

13 THE COURT: You do not recognize it offhand?

14 THE WITNESS: Yes, I might have seen it.

15 THE COURT: All right. Go ahead.

16 Q. I'm going to ask you to look at 3508-2, pages 2 and 3, and
17 read through that and see if that refreshes your recollection
18 as to the question previously asked regarding what Lettire
19 agreed with the DOL and --

20 MR. JACOBS: Judge, we object. There was no failure
21 of recollection. I think the witness said she didn't know.

22 THE COURT: Sustained. Put another question.

23 BY MR. DONALDSON:

24 Q. Ms. Lettire, are you familiar with whether or not Lettire
25 Construction reached a settlement agreement with the Department

DbkQnar1

Lettire - cross

1 of Labor related to its conduct and Enviro Demo?

2 THE COURT: Counsel, I think what we are going to need
3 to do maybe to speed this along is have a side bar, so I can
4 see where we're going and then I will make some rulings.

5 (Continued on next page)

DbkQnar1

Lettire - cross

1 (At the side bar)

2 THE COURT: So what's the relevance?

3 MR. DONALDSON: It goes to the witness' credibility.
4 It directly relates to the prior questions I was asking
5 regarding whether or not this wage determination was included,
6 this wage determination which is part of the Davis Bacon Act
7 was part of Mr. Naranjo's or Enviro's contract. She told them
8 that it was. I believe she said in her direct testimony that
9 it was. This clearly indicates that they --

10 THE COURT: And then she just said in answer to your
11 cross-examination that that was not accurate. While she did
12 not agree with your characterization that it was a lie in the
13 sense of a knowing and intentional falsehood, she agreed that
14 she had not seen the underlying contract and did not have a
15 basis for making that statement at the time, so I don't see
16 what this is adding.

17 MR. DONALDSON: I believe, your Honor, this
18 specifically states that they agree, Lettire, she being a
19 representative of Lettire, that Lettire specifically agreed
20 that Lettire did not put the Davis Bacon and related items into
21 the contract of Enviro as they were supposed to do. That this
22 specifically states that.

23 MR. JACOBS: With respect to Enviro?

24 MR. DONALDSON: Yes.

25 MR. BURKE: Essentially, Judge --

DbkQnar1

Lettire - cross

1 THE COURT: Show me where it says that.

2 MR. DONALDSON: I don't have the page. Oh, page 2 and
3 Judge.

4 THE COURT: Where?

5 MR. DONALDSON: It says here page 3, number 11.

6 THE COURT: Respondents did not include or incorporate
7 by reference the required labor standard clause as set forth in
8 various provisions with the following subcontractors
9 including -- and then there is a list including Enviro. So
10 what does that show?

11 MR. DONALDSON: It says here that -- this is what I'm
12 reading. It says, page 2, respondents stipulate to the
13 following. Then we go to page 3, number 11, respondents did
14 not include or incorporate by reference required DBRA labor
15 standards clauses or the CWHSSA labor standards clauses in its
16 contracts for work on the Hobbs Ciena project in its contracts.

17 MR. BURKE: In its prevailing wage.

18 MR. DONALDSON: So it specifically says they did not
19 do that.

20 THE COURT: First of all, let me ask the government,
21 what are those provisions -- are those the prevailing wage
22 provisions?

23 MR. JACOBS: Judge, I accept their representations.
24 I'm, frankly, not sure standing here. We had not thought this
25 was the subject of any legitimate dispute whether any payroll

DbkQnar1

Lettire - cross

1 he signs within a week of the contracts reflects the rates he's
2 saying they didn't get.

3 MR. DONALDSON: 29 CFR, Section 5.5(a)(1), that's why
4 I asked that earlier. It includes wage rates. It includes
5 records.

6 THE COURT: How are you going to get that before the
7 jury?

8 MR. DONALDSON: I asked her whether or not she was
9 familiar with the Davis Bacon Act; whether or not that means
10 the Davis Bacon Act includes wage rates or whether or not Davis
11 Bacon Act includes wage records. I asked her that earlier to
12 set the foundation to establish this, and then this comes in
13 because it's directly under that.

14 THE COURT: So what is the question now? Assuming all
15 of that, what is the question now you propose to put to her?

16 MR. DONALDSON: I want to propose to put that this --
17 that Lettire Construction that she's a representative of, did
18 in fact, agree that they did not do what's here, and that this
19 is -- it's relevant, one, because it's clearly inconsistent to
20 what she said, and I don't know that I have a limit to how many
21 times I can show the inconsistency, but it's relevant because,
22 one, it shows the inconsistency, and, two -- that's the main
23 reason. It's relevant. It goes to credibility in my opinion.

24 MR. JACOBS: She's not the appropriate witness for
25 this line of questioning. They would have been free to call

DbkQnar1

Lettire - cross

1 any number of witnesses who are familiar with the terms of the
2 settlement who actually signed this document. She is
3 essentially a bookkeeper for Lettire and while she --

4 MR. DONALDSON: Judge --

5 MR. JACOBS: Hang on. I'm not finished.

6 -- while she's familiar with the general terms of the
7 settlement, there's no foundation for her familiarity with
8 either the specific sections or what's reflected here that
9 counsel intends to elicit.

10 MR. DONALDSON: The problem I have with that is
11 yesterday the government rather quickly asked her about the
12 settlement that relates directly to this settlement, it's
13 \$3,000. That is directly in this contract. It's on page --
14 and I read the contract again just to make sure.

15 THE COURT: Well --

16 MR. DONALDSON: She had that --

17 THE COURT: Excuse me.

18 MR. DONALDSON: I'm sorry, Judge.

19 THE COURT: I am going to allow some questions. We'll
20 take it one question at a time. Either she has familiarity
21 with this settlement or she doesn't. We don't -- none of you
22 know the answer to that. So you can put some questions to her,
23 and if she has familiarity with it, I will allow the answers.
24 And if she doesn't, I won't.

25 MR. DONALDSON: OK.

DbkQnar1

Lettire - cross

1 (In open court)

2 BY MR. DONALDSON:

3 Q. Ms. Lettire, you mentioned yesterday, as well as today,
4 that Lettire Construction settled or paid \$3,000 to who?

5 A. The employees.

6 Q. And this \$3,000 settlement related to the investigation of
7 the Department of Labor to or of Lettire Construction?

8 A. Yes.

9 Q. And you're aware of that because -- are you not aware of
10 that because it was in the settlement agreement?

11 A. No, the investigator sent me papers of the amounts that I
12 had to pay the employees.

13 Q. Now, when asked earlier about the settlement agreement, you
14 said you may have read it. Looking at it now, do you know if
15 you've read that document or seen that document before?

16 A. I'm not sure. There was a lot of documents. I don't know.

17 MR. DONALDSON: Your Honor, I'll move on to something
18 else.

19 THE COURT: All right.

20 BY MR. DONALDSON:

21 Q. Could you please turn to Exhibit 102 in the binder in front
22 of you.

23 Ms. Lettire, do you know someone named Amanda Lettire

24 A. Yes.

25 Q. Amanda Lettire is your niece, correct?

DbkQnar1

Lettire - cross

1 A. Yes.

2 Q. And Amanda Lettire works or did work at Lettire
3 Construction -- does she still work there?

4 A. Yes.

5 Q. How long has she been working there?

6 A. Five years maybe.

7 Q. Do you know someone named Gina?

8 A. Yes.

9 Q. Who is Gina?

10 A. My niece.

11 Q. She works there as well?

12 A. Yes.

13 Q. How long has she been working there?

14 A. About four years.

15 Q. And Gina and Amanda both work -- what do they do?

16 A. Amanda is assistant PM, project manager, and Gina would
17 help me with the payroll.

18 Q. On direct yesterday, you identified this document as a
19 prevailing wage signature form, correct?

20 A. Yes.

21 Q. I believe you said that's your handwriting inside the
22 document, correct?

23 A. Yes.

24 Q. When you said that's your handwriting, you're talking about
25 where it says classification, hourly rate, fringe rate, those

DbkQnar1

Lettire - cross

1 particular sections are your handwriting, correct?

2 A. Yes.

3 Q. Where it says number 3 asbestos rate and fringe, that's
4 your handwriting as well, correct?

5 A. Yes.

6 Q. On page 16 of 101, if we can have that placed up on the
7 screen. If you can look at page 16 of 101, you identified
8 these signatures, correct?

9 A. Yes.

10 Q. You identified the subcontractor's signature as Jover
11 Naranjo, correct?

12 A. Yes.

13 Q. And you said you knew that how?

14 A. By looking at the payroll reports.

15 Q. So yesterday when you said you looked at the screen or
16 looked at the paper and said that's Jover Naranjo's signature,
17 you knew that because you remembered his signature from looking
18 at payroll reports?

19 A. Yes.

20 Q. The last time you looked at a payroll report with Jover
21 Naranjo's signature was when?

22 A. Last week.

23 Q. Last week?

24 A. Yeah.

25 Q. Oh, in reviewing with the government you looked at it.

DbkQnar1

Lettire - cross

1 A. Yes.

2 Q. Is that right?

3 A. Yes.

4 Q. And you recognized the other signature to the left as whose
5 signature?

6 A. My brother, Nicholas.

7 Q. Nicholas. OK. Can we put back up 102, please. Go back to
8 102, if you don't mind, in the binder in front of you.

9 Now, the signature you see here on 102 is whose
10 signature?

11 A. Jover's.

12 Q. And you know that because you saw it before? You're
13 familiar with it?

14 A. Yeah, well, I'm pretty sure he signed that in the office.

15 Q. You're pretty sure he signed that in the office?

16 A. When I filled out the form.

17 Q. Just so I'm clear, you're saying that Jover Naranjo signed
18 Government Exhibit 102 in your office? Is that a yes?

19 A. Yes.

20 Q. Now, on top of Jover's signature, there's a name there says
21 Lettire Construction Corporation, correct?

22 A. Yes.

23 Q. Where is the signature?

24 A. There isn't one.

25 Q. Where's the fully executed copy of this document?

DbkQnar1

Lettire - cross

1 A. In the office.

2 Q. So there is another one that has Lettire Construction
3 Corporation's signature on it?

4 A. I don't know if there's a signature.

5 Q. I'm sorry?

6 A. I don't know if it's signed.

7 Q. So you don't know whether or not someone from Lettire
8 actually signed this document?

9 A. No.

10 Q. Even though you're saying that he signed it in your office?

11 A. Yes.

12 Q. So when he signed this document in your office in front of
13 you, what did you do with it?

14 A. I filed it.

15 Q. Without it being signed?

16 A. Yes.

17 Q. Haven't you signed your brother's signature before?

18 A. Yes.

19 Q. Hasn't he given you the authority to do that?

20 A. Yes.

21 Q. For like 15, 20 years?

22 A. Yes.

23 Q. So, are you saying on this particular day when he came into
24 your office and signed this document in front of you, you
25 didn't sign it?

DbkQnar1

Lettire - cross

- 1 A. No.
- 2 Q. And your brother didn't sign it?
- 3 A. No.
- 4 Q. Neither brother?
- 5 A. No.
- 6 Q. And you filed it away?
- 7 A. Yes.
- 8 Q. If you look to the right of those signatures, there's a
- 9 word that says "date." Do you see that?
- 10 A. Yes.
- 11 Q. There's a word that says "date" that's across from the
- 12 empty line for your brother's signature, correct?
- 13 A. Yes.
- 14 Q. There's no date there, correct?
- 15 A. No.
- 16 Q. And there's a word that says "date" directly across from
- 17 where you're saying Jover Naranjo signed it, correct?
- 18 A. Yes.
- 19 Q. There's no date there either, right?
- 20 A. No.
- 21 Q. Can you tell the jury exactly, exactly when this was signed
- 22 in your office by Jover?
- 23 A. No, I can't.
- 24 Q. It wasn't signed on August 3, 2009, correct?
- 25 A. I don't know.

DbkQnar1

Lettire - cross

1 Q. Isn't it true that this document was provided to Jover
2 Naranjo sometime in December 2009?

3 A. I don't remember.

4 Q. I will give you a document -- well, will anything refresh
5 your recollection?

6 A. Maybe.

7 MR. DONALDSON: Your Honor, can I have one second,
8 please?

9 THE COURT: Yes.

10 BY MR. DONALDSON:

11 Q. Before we get to that, before we get to that, this is not a
12 document from the Department of Labor, correct?

13 A. No.

14 Q. This is not a document from HPD, correct?

15 A. No.

16 Q. This is a document that you and Amanda made up in your
17 office, correct?

18 A. Yes.

19 Q. In fact, you had given this document to several other
20 subcontractors, correct?

21 A. Yes.

22 Q. And you gave it to them around December 2009, correct?

23 A. I don't remember.

24 MR. DONALDSON: Your Honor, may I approach for a quick
25 second?

DbkQnar1

Lettire - cross

1 THE COURT: Yes.

2 MR. DONALDSON: Just so the record is clear, I'm
3 providing the government a copy of what I want to show the
4 witness to assist her with her recollection.

5 MR. JACOBS: Judge, we don't object to him showing it
6 to the witness, but beyond that, we may object.

7 THE COURT: All right.

8 BY MR. DONALDSON:

9 Q. Ms. Lettire, I'm giving you a two-page document. You can't
10 read it out loud. What I want you to do is just review it and
11 see if that helps you to remember when the document may have
12 been provided to Mr. Naranjo.

13 A. I don't remember.

14 Q. You don't remember?

15 A. I didn't do this.

16 Q. OK. I'll take that back.

17 Ms. Lettire, would it be fair to say that the document
18 102 in evidence was created by you and/or Amanda to assist with
19 the investigation that was being conducted by the Department of
20 Labor

21 A. I don't know.

22 Q. You don't know why you created it?

23 A. Some of the subs weren't sure of the rates because not
24 everything is listed, like if a roofer was waterproofing, and
25 to make sure they were using the correct rate, we just made

DbkQnar1

Lettire - cross

1 these up. That's as far as I know.

2 Q. Do you know whether or not Amanda Lettire, your niece, said
3 anything to Jover to or -- or sent a document like this to
4 Jover?

5 A. I don't know if she did, no.

6 Q. Now, on direct yesterday, you stated that the -- your
7 office was on 110th Street; is that correct?

8 A. Yes.

9 Q. I believe you said that you -- Jover Naranjo walked in and
10 mailed certified payroll records and sign-in sheets to your
11 office, correct?

12 A. Yes.

13 Q. Now, the payroll records I believe are Government Exhibit
14 202 through -- I believe it's 20 -- 201 to 233.

15 Now, look at 201. Do you have any recollection of
16 whether that was walked in or mailed to you?

17 A. No, I don't.

18 Q. You don't know?

19 A. (Indicating)

20 Q. Do you know which one of those were walked in and which
21 ones were mailed in?

22 A. No, I don't.

23 Q. Do you have any idea how many were walked in and how many
24 were mailed in?

25 A. No.

DbkQnar1

Lettire - cross

1 Q. Do you know when it was mailed in -- do you know when a
2 certified payroll record was mailed in?

3 A. I don't remember, no.

4 Q. Do you have any envelopes stating or illustrating that
5 Mr. Naranjo mailed one of those certified payroll records?

6 A. No.

7 Q. So when you say that Mr. Naranjo -- you know that he --
8 well, when you say he walked in, you remember him walking in
9 because you saw him come into your office?

10 A. Yeah.

11 Q. And you remember him handing you documents?

12 A. Yeah.

13 Q. You remember that?

14 A. Yeah.

15 Q. How do you know he mailed it?

16 A. How do I know? I don't know. I don't -- he didn't -- he
17 didn't come every week and give me payroll.

18 Q. Can you say while you're sitting there that Jover Naranjo
19 definitely mailed you payroll? Ms. Lettire, can you say that
20 Jover Naranjo definitely mailed you certified payroll records?

21 A. I don't have any envelopes or anything, no, I don't, so I
22 guess --

23 Q. You guess what?

24 A. No, I guess.

25 Q. Let's turn to Government Exhibit 103, please. Put

DbkQnar1

Lettire - cross

1 Government Exhibit 103 on the screen.

2 MR. DONALDSON: May I have one second please, your
3 Honor?

4 THE COURT: Yes.

5 Q. You identified this document yesterday, and I believe you
6 said this was the amount that was paid to Enviro. Do you see
7 that?

8 A. Yes.

9 (Continued on next page)

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Dbkgnar2

Lettire - cross

1 BY MR. DONALDSON:

2 Q. And you point to the number at the bottom \$833,937 as the
3 amount paid to Enviro, correct?

4 A. Yes.

5 Q. The government then referred you back to 901 and showed
6 you -- or you indicated how much the contract was for between
7 Lettire and Enviro. Do you recall that?

8 A. Yes.

9 Q. And that amount was 785,000, correct?

10 A. Yes.

11 Q. So then -- I'm not too good at math. It's about \$45,000.
12 It's more, \$833,000 is more than the contract, is that right?

13 A. Yes.

14 Q. Now, you said on direct -- on cross, at least, that there
15 was an investigation by the Department of Labor regarding
16 Lettire and its relationship to subcontractors starting around
17 December 2009, correct?

18 A. That was before that, I think.

19 Q. Before that?

20 A. The subs, yes.

21 Q. So, you have amounts paid here -- let's go November 4,
22 2009, 12/23, 2009, February 19, 2010, March 4, 2010, and two
23 from March 26, 2010.

24 Do you see those?

25 A. Yes.

Dbkgnar2

Lettire - cross

1 Q. And across from those it says "reconciled." Do you see
2 that?

3 A. Yes.

4 Q. Tell the jury what that means.

5 A. That it was paid; it was cleared.

6 Q. That the invoices were sent to you and then you all paid
7 them, correct?

8 A. Yes.

9 Q. So, sometime after the investigation began, Enviro was
10 still sending you invoices for the work it was doing at the
11 site, correct?

12 A. Yes.

13 Q. And this was while you knew that an investigation was going
14 on, correct?

15 A. Yes.

16 Q. So, would it be fair to say that Lettire would not be
17 paying Enviro monies after the investigation began for work
18 that it -- let me rephrase the question.

19 You didn't stop paying Enviro after the investigation
20 began, correct?

21 A. No.

22 Q. Did you hire Enviro after March 2010?

23 A. No, I don't think so, no.

24 Q. Lastly about this, when you, Lettire, received the
25 \$87-million-budget amount from Hobbs Ciena to do the work, you

Dbkgnar2

Lettire - cross

1 budgeted a portion for demolition, correct?

2 A. Yeah.

3 Q. And Lettire is a for-profit company, correct?

4 A. Yes.

5 Q. So, the money that you budgeted for, I guess, for
6 demolition, you took into account that Lettire wanted to make
7 some money off that, correct? That's fair to say, right?

8 A. Yeah, but I don't do any of the pricing. I don't know.

9 Q. I'll move on.

10 MR. DONALDSON: I think I'm finished. Thank you very
11 much.

12 THE COURT: Mr. Burke.

13 CROSS-EXAMINATION

14 BY MR. BURKE:

15 Q. I think you mentioned that Lettire's end of the contract
16 got paid \$87 million, right?

17 A. Yes.

18 Q. Do you know how much profit Lettire made?

19 A. No.

20 Q. And the contract was what about 81 pages?

21 A. I guess, yeah.

22 Q. And the contract is in English, right?

23 A. Yes.

24 Q. As far as you know, the contract was never translated into
25 Spanish, right?

Dbkgnar2

Lettire - cross

1 A. No.

2 Q. And I think you said one of your jobs is to check out the
3 payroll?

4 A. Yes.

5 Q. And to make sure it complies with the Davis-Bacon Act?

6 A. Yes.

7 Q. And Lettire was the general contractor, right?

8 A. Yes.

9 Q. And under the Davis-Bacon Act the general contractor, one
10 of the responsibilities is to see that the subcontractors
11 comply with prevailing wage agreements, correct?

12 A. Yes.

13 Q. Because if they don't, then the general contractor is
14 responsible to pay those wages, correct?

15 A. Yes.

16 Q. And as far as you know, Lettire has agreed to pay any
17 back-wages that Enviro owes its workers for any violation of
18 the prevailing wage act, right?

19 A. I guess yeah.

20 Q. And Nick Lettire is your brother, right?

21 A. Yes.

22 Q. Did you ever discuss the settlement with him?

23 A. No.

24 Q. Did you ever speak to him about business in Lettire?

25 A. Yeah.

Dbkgnar2

Lettire - cross

1 Q. But as far as you remember he never -- excuse me, your
2 Honor.

3 You are aware that there was a settlement, right, I
4 think you said that before?

5 A. Yeah.

6 Q. But you never discussed this with your brother, Nick?

7 A. The settlement that we paid our employees? Is that what --

8 Q. No, the settlement I think that you had with the United
9 States Department of Labor?

10 A. Yeah.

11 Q. You did discuss it with him?

12 A. Yes, a little bit, yeah.

13 Q. So, are you aware that Lettire agreed to pay any back-wages
14 owed by Enviro for violating the prevailing wage laws?

15 A. I don't know what the exact agreement was, no.

16 Q. As far as you know, nobody in Lettire was arrested or
17 accused of a crime, right?

18 THE COURT: Sustained. Counsel, come to side bar.

19 (Continued on next page)

Dbkgnar2

Lettire - cross

1 (At the side bar)

2 THE COURT: Although there has been no objection to
3 this line of questioning, I am worried that it's injecting a
4 totally irrelevant issue into this case and has the propensity
5 to confuse the jury.

6 What is the argument that you seek to advance?

7 MR. BURKE: That Lettire paid a fine.

8 THE COURT: And?

9 MR. BURKE: They were involved in the same behavior.

10 THE COURT: And?

11 MR. BURKE: And it had the same responsibility as
12 Enviro.

13 THE COURT: Right.

14 MR. BURKE: They paid a fine. Nobody in Lettire was
15 arrested or prosecuted.

16 THE COURT: Yes. And so what is that? An unequal
17 protection argument? If that's your argument, of course,
18 that's a legal argument which you would have to make as to
19 OSHA, which it would fail remarkably, as you're well aware.

20 MR. BURKE: I'm sorry.

21 THE COURT: I think what you're trying to inject in
22 front of the jury is an argument in which they are in no
23 position to evaluate as to why the Department of Labor
24 proceeded in one way with respect to some people and another
25 way as to other people.

Dbkgnar2

Lettire - cross

1 If we got into that, it would create a minitrial,
2 really probably a maxitrial, and we'd be here for a few months.

3 MR. BURKE: How about this one, Judge: That this
4 prevailing wage dispute is really much more in the nature of a
5 civil dispute.

6 THE COURT: I know that's an argument you've been
7 trying to make from your opening statement on. I don't see how
8 that's proper, either.

9 I must admit, in fairness to defense counsel, that the
10 government has chosen to sit like a bump on the log, or maybe
11 the correct terminology is a potted plant, and not object, but
12 there comes a point where the Court needs to make sure that the
13 jury is not being asked to speculate about matters that are
14 irrelevant to their determination, so I think you'd better move
15 on.

16 MR. BURKE: Got it.

17 (Continued on next page)

Dbkgnar2

Lettire - cross

1 (In open court)

2 MR. BURKE: One moment. I think I'm not done. I'm
3 almost done.

4 THE COURT: All right.

5 BY MR. BURKE:

6 Q. Now, under the Davis-Bacon Act, Lettire, as a general
7 contractor, has a responsibility of also notifying and
8 explaining to the subcontractors the provisions of the
9 prevailing wage agreement, correct?

10 A. Yes.

11 MR. BURKE: No further questions, Judge.

12 THE COURT: Redirect.

13 MR. JACOBS: Briefly, your Honor. Thank you.

14 REDIRECT EXAMINATION

15 BY MR. JACOBS:

16 Q. Mr. Phillips, can we put up the first page of Government
17 Exhibit 201? And can we highlight the date where it says "for
18 week ending" in the upper left-hand side, highlight, not zoom.

19 Ms. Lettire, what is this document?

20 A. Certified payroll report.

21 Q. And how close in time is the week -- how does the time
22 period of this certified payroll relate to the August 3, 2009,
23 contract?

24 A. It's dated August 9th.

25 Q. Is this for the first week of work on the Ciena?

Dbkgnar2

Lettire - redirect

1 A. First payroll, yes.

2 Q. And there's a column that begins hourly rate. Could we
3 highlight that column.

4 And there are two numbers that appear, \$33.15 and
5 \$49.29. How do those dollar figures relate to the prevailing
6 wage rates that were in both Government Exhibits 101 and
7 Exhibit 102?

8 A. Those are the rates.

9 Q. And are those the combination of the fringe and wages in
10 those rates?

11 A. Yes.

12 Q. Let's look at the next page of this document. Whose
13 signature is that at the bottom?

14 A. Jover.

15 Q. And on cross examination, you were asked some questions
16 about whether you received this by mail or by hand-delivery
17 from Mr. Naranjo.

18 Do you recall those questions?

19 A. Yes.

20 Q. How did you then provide this document to the New York City
21 Department of Housing Preservation and Development?

22 A. I mailed it.

23 Q. Do you have any question whatsoever about whether you
24 mailed it or whether you hand-delivered it?

25 A. No.

Dbkgnar2

Lettire - redirect

1 Q. And how did you deliver this document to the United States
2 Department of Labor?

3 A. I mailed it.

4 MR. JACOBS: No further questions, Judge.

5 THE COURT: Anything else?

6 MR. DONALDSON: No.

7 MR. BURKE: Nothing, Judge.

8 THE COURT: Thank you very much. You may step down.

9 (Witness excused)

10 MR. JACOBS: The government calls Juan Carlos
11 Rodriguez, but while the agent is getting him, I'd like to read
12 a brief stipulation.

13 THE COURT: Yes.

14 MR. JACOBS: "It's stipulated and agreed that if
15 called to testify, a Special Agent for the United States
16 Department of Labor, Agent 1, would testify as follows: On or
17 about June 17, 2010, Agent 1 assisted in the execution of a
18 search warrant, the search warrant at the office of Enviro &
19 Demo Masters, Inc. at 31-48 82nd Street, Jackson Heights, New
20 York, the Enviro office. Government Exhibits 801 through 853
21 are copies of documents that Agent 1 seized from a drawer of a
22 desk located in the basement of the Enviro office.

23 "Two, if called to testify, another special agent from
24 the United States Department of Labor would testify as follows:
25 Agent 2 assisted in the execution of a search warrant at the

Dbkgnar2

Lettire - redirect

1 Enviro office. And Government Exhibits 901 through 903 are
2 copies of documents that Agent 2 seized from the basement of
3 the Enviro office.

4 "It's stipulated and agreed that exhibits 801 through
5 853, 901 through 903, and this stipulation, which is marked
6 Government Exhibit 1001, may be received in evidence as
7 government exhibits at trial."

8 Your Honor, the government offers exhibit 1001, as
9 well as exhibits 801 through 853 and 901 through 903.

10 THE COURT: Received.

11 (Government's Exhibits 801-853, 901-903, 1001 received
12 in evidence)

13 MR. JACOBS: At this time, I'd like to publish briefly
14 for the jury Government Exhibit 901 which was seized from the
15 Enviro office. We can take that down now.

16 Now, we call Juan Carlos Rodriguez.

17 MR. DONALDSON: Before we do that, I think I left a
18 document at the witness stand. Can I retrieve that.

19 THE COURT: Yes. Absolutely.

20 MR. DONALDSON: Sorry about that.

21 THE COURT: No problem.

22 MR. JACOBS: We're getting our interpreters from the
23 hallway.

24 JUAN CARLOS RODRIGUEZ,

25 called as a witness by the Government,

Dbkgnar2

Lettire - redirect

1 having been duly sworn, testified through the Spanish
2 interpreter as follows:

3 DIRECT EXAMINATION

4 BY MR. JACOBS:

5 Q. Good morning. Where do you work?

6 A. I work for UNAM.

7 Q. What is that?

8 A. The English letters stand -- UNAM stands for Laborers
9 International of the Unions of America.

10 Q. It's a labor union?

11 A. Yes.

12 Q. What's your position?

13 A. Organizer.

14 Q. And what generally are your responsibilities?

15 A. My main responsibilities are to work with nonunion
16 companies with the aim of organizing the workers to join the
17 union in the future.

18 Q. And how long have you done that work?

19 A. Thirteen years.

20 Q. Are you familiar with a construction project that took
21 place in 2009 at East 100th Street between First and Second
22 Avenues?

23 A. Yes.

24 Q. Have you been to that job site?

25 A. Yes.

Dbkgnar2

Rodriguez - direct

1 Q. When was the first day you went there?

2 A. The first day I went to that site was on August 12th, 2009.

3 Q. When was the last day?

4 A. Towards the end of February of 2010.

5 Q. Between those dates, approximately how many times did you
6 go to the job site?

7 A. About 30 times.

8 Q. Did you go alone or with someone else?

9 A. I went with a coworker.

10 Q. Who?

11 A. Jerry Kraft.

12 Q. When you went to the job site with Mr. Kraft, where did you
13 two locate yourselves?

14 A. On the sidewalk.

15 Q. In general, what did you and Mr. Kraft do at the job site?

16 A. We would give information to the workers regarding how much
17 they should be earning from a government job. We took photos
18 and we also filmed videos.

19 Q. Did you provide -- in what form did you provide information
20 to the workers?

21 A. We would give it to them in writing on a flier.

22 Q. Were the fliers in English or Spanish?

23 A. Spanish.

24 Q. What time did you typically arrive at the job site with
25 Mr. Kraft?

Dbkgnar2

Rodriguez - direct

1 A. Always before 7:00 a.m.

2 Q. Did you observe workers arrive at the job site?

3 A. Yes.

4 Q. At what time approximately did you observe workers arrive?

5 A. Ten to 15 minutes before 7:00 a.m.

6 Q. What time did you typically leave the job site?

7 A. Between 2:00 and 3:00 p.m.

8 Q. Were the workers still there at that time?

9 A. Yes.

10 Q. Had any left by that point?

11 A. No.

12 Q. Did you ever come back to the job site after you had left
13 around 3:00?

14 A. Yes.

15 Q. What time did you come back?

16 A. 5:30 to 6:00 in the evening.

17 Q. What did you observe on those occasions when you came back?

18 A. At that time, people would begin leaving work.

19 Q. How many times did you go to the job site that late?

20 A. Six or seven times.

21 Q. On a given day, how many workers in total did you typically
22 observe enter the job site?

23 MR. BURKE: Objection to the form of the question.

24 THE COURT: Ground.

25 MR. BURKE: Typically.

Dbkgnar2

Rodriguez - direct

1 THE COURT: Pardon.

2 MR. BURKE: Typically observe.

3 THE COURT: I think that's permissible under these
4 circumstances. You may cross examine, of course.

5 Overruled.

6 You may answer.

7 THE INTERPRETER: Can that question please be repeated
8 for the interpreter.

9 BY MR. JACOBS:

10 Q. Let me actually back up. I'll ask one question first.

11 Did you count workers entering the job site each
12 morning you were there?

13 A. Yes.

14 Q. How many workers did you typically observe enter the job
15 site?

16 A. Between 20 and 25 people.

17 Q. In the course of going to the job site, did you become
18 familiar with an individual named Luperio Naranjo?

19 A. Yes.

20 Q. Do you see him in court here today?

21 A. Yes.

22 Q. Can you identify him by where he's sitting and a piece of
23 clothing he's wearing?

24 A. Yes. He is that man that's over there with the brown
25 sweater on.

Dbkgnar2

Rodriguez - direct

1 MR. JACOBS: Could the record reflect that the witness
2 has identified Luperio Naranjo?

3 THE COURT: Yes.

4 BY MR. JACOBS:

5 Q. Did you ever observe Luperio Naranjo on the job site at
6 East 100th Street?

7 A. Every day.

8 Q. Did you ever observe Luperio Naranjo do demolition or take
9 out debris on East 100th Street?

10 A. No.

11 Q. What did you see him doing?

12 A. Supposedly, he's the owner of the company.

13 MR. BURKE: Objection, move to strike.

14 THE COURT: Sustained.

15 BY MR. JACOBS:

16 Q. What did you see Mr. Luperio Naranjo doing at the job site?

17 A. He would come in his van and what he really did was to give
18 gloves out to the workers, and I would see him give
19 orders -- he would give orders to the workers.

20 Q. Was he ever present when you handed the workers the fliers
21 you described?

22 A. Yes.

23 Q. How did he react?

24 A. He would make the workers throw the flier down to the
25 ground.

Dbkgnar2

Rodriguez - direct

1 Q. Did the worker do that?

2 A. Yes.

3 Q. Did you become familiar with an individual named Jover
4 Naranjo?

5 A. Yes.

6 Q. Do you see him in court?

7 A. Yes.

8 Q. Can you identify who he is by where he's sitting and
9 something he's wearing?

10 A. He's that man with the red and white plaid shirt on.

11 MR. JACOBS: Could the record reflect that the witness
12 has identified Jover Naranjo?

13 MR. DONALDSON: Yes.

14 THE COURT: The record so reflects.

15 BY MR. JACOBS:

16 Q. Did you ever see Jover Naranjo on the job site at East
17 100th Street?

18 A. Yes.

19 Q. About how many times?

20 A. Once or twice.

21 Q. Did you ever see him do demolition work or take out debris
22 on the job site?

23 A. No.

24 Q. What did you see him do at the job site?

25 A. I only saw him talking with Mr. Luperio Naranjo.

Dbkgnar2

Rodriguez - direct

1 MR. JACOBS: May I approach.

2 THE COURT: Yes.

3 BY MR. JACOBS:

4 Q. I'm handing the witness materials marked for identification
5 Government Exhibits 401 through 436.

6 Do you recognize those materials?

7 A. Yes.

8 Q. Did you review all those materials before testifying?

9 MR. BURKE: Forgive me for interrupting. Thank you.
10 Sorry, Judge.

11 A. Yes.

12 Q. With exhibit 401, do you recognize that item?

13 A. Yes.

14 Q. What is it?

15 A. That's a tape recording of what we would record every day
16 at the work site.

17 Q. Do the videos fairly and accurately capture what you
18 observed at the job site?

19 A. Yes.

20 Q. And exhibit 402 through 436, what are those documents?

21 A. Those are photos which have been extracted from the tapes.

22 Q. Do the images fairly and accurately capture images that
23 appear on the videos?

24 A. Yes.

25 Q. And do the dates fairly and accurately reflect the date

Dbkgnar2

Rodriguez - direct

1 each image was recorded?

2 A. Yes.

3 Q. Do the photos in the stack show every worker you saw on the
4 job site or just some of them?

5 A. It's only some of all of the workers.

6 MR. JACOBS: Your Honor, the government offers
7 exhibits 401 through 436.

8 MR. BURKE: No objection.

9 MR. DONALDSON: No objection.

10 THE COURT: Received.

11 (Government's Exhibits 401-436 received in evidence)

12 MR. JACOBS: No further questions, Judge. Thank you.

13 THE COURT: Cross examination.

14 CROSS-EXAMINATION

15 BY MR. BURKE:

16 Q. I think you said on direct examination you work for the
17 Labor International of Unions of America. Is that who you work
18 for?

19 A. Yes.

20 Q. And how long have you worked for them?

21 A. Thirteen years.

22 Q. And are they -- withdrawn.

23 That organization, is that for all unions all over
24 America or just certain unions?

25 A. No. It's for all of America and including Canada also.

Dbkgnar2

Rodriguez - cross

1 Q. And this organization, they get their money from labor
2 unions?

3 A. This organization receives money from the workers who are
4 members of those unions.

5 Q. Because the workers pay union dues, correct?

6 A. Yes.

7 Q. And then that money goes to certain unions, correct?

8 A. Yes.

9 Q. And then those unions send money to your organization?

10 A. Yes.

11 Q. And then that organization pays you?

12 A. Yes.

13 Q. And your job is to get people to join the union, right?

14 A. Yes.

15 Q. And the more people you have in the union, the more money
16 the union gets, right?

17 A. Yes.

18 Q. And the more money the union gets, the more power these
19 organizations have, correct?

20 MR. JACOBS: Objection.

21 THE COURT: This is all fascinating I'm sure, but it
22 doesn't seem to have anything to do with this case, counsel.

23 MR. BURKE: I understand the Court's ruling.

24 THE COURT: That's a step in the right direction.

Dbkgnar2

Rodriguez - cross

1 BY MR. BURKE:

2 Q. Local 79, you're familiar with that union, right?

3 A. I'm a member of Local 79.

4 Q. And that's a pretty big union in the city, right?

5 A. It's very strong.

6 Q. Thousands of members, right?

7 A. Exactly.

8 Q. And so your job is when you see nonunion workers working,
9 you try to get them to join the union, right?

10 A. Not just that.

11 Q. Now, turning to this case and this job in particular, what
12 I mean is the one on 100th Street, did you complain to the
13 Department of Labor about the job?

14 A. Yes.

15 Q. And was that in early August?

16 A. No.

17 Q. Do you know who you spoke to in the Department of Labor?

18 A. Yes.

19 Q. Who?

20 A. Camille Coppolla.

21 Q. And this is something you had done many times in the past,
22 correct?

23 MR. JACOBS: Objection.

24 Q. What I mean when I say that is --

25 MR. JACOBS: Objection.

Dbkgnar2

Rodriguez - cross

1 THE COURT: Sustain, but I think you can rephrase it.

2 BY MR. BURKE:

3 Q. Because as part of your duties as a union organizer, when
4 you see nonunion workers working, very often you report it to
5 the Department of Labor?

6 A. Um, yes, there are many workers who are working for
7 nonunion companies in public jobs when they are not being paid
8 correctly, but I need evidence to go to the Department of Labor
9 and make a complaint.

10 Q. So the answer to my question is yes, this is what you do,
11 you make reports to the Department of Labor, correct?

12 A. Yes.

13 Q. And I think you mentioned you used to go to the site with
14 Jerry Kraft, right?

15 A. Yes.

16 Q. And who does he work for?

17 A. He's an organizer, he was, now he's retired and he was an
18 organizer for Local 79.

19 Q. So he didn't work for the exact organization you do, but he
20 worked for Local 79; is that fair to say?

21 A. Exactly.

22 Q. Now, you said you went to the job site about 30 times,
23 right?

24 A. Yes.

25 Q. Could it have been as many as 40 times?

Dbkgnar2

Rodriguez - cross

1 A. No.

2 Q. And when you went there, you would go with Jerry Kraft and
3 other people?

4 A. In the beginning, Jerry Kraft and me and after three or
5 four weeks, the picket lines at the work site began.

6 Q. And when you had a picket line at the work site, how many
7 workers -- excuse me withdrawn.

8 How many people would be in that picket line?

9 A. Around ten people.

10 Q. And those people, were they paid by the unions, too?

11 A. No, they're members of the union. They go voluntarily.
12 They are people who are not working at that time.

13 Q. And since the last two weeks, have you consulted with
14 anybody from Local 79 about this case?

15 A. Yes.

16 Q. And do you know if Local 79 had people in the audience
17 watching the trial?

18 A. No.

19 Q. How many times did you picket the job?

20 A. It must have been about 40 times.

21 Q. And when you would do that would you bring a big rat
22 sometimes?

23 A. Yes.

24 Q. And would you blow up the rat when you got there, or did
25 you blow it up before you brought it there? How did it work?

Dbkgnar2

Rodriguez - cross

1 MR. JACOBS: Objection.

2 THE COURT: Sustained.

3 BY MR. BURKE:

4 Q. And would you go visit some of the workers at home?

5 A. No.

6 Q. You had meetings with the workers, though, right?

7 A. Yes. We had a meeting with the workers four to five months
8 after the completion of the job.

9 Q. And did you have a meeting with the workers at a coffee
10 shop?

11 A. Yes.

12 Q. And you had meetings with the workers at a restaurant?

13 A. Yes.

14 Q. On October 23, 2010, you had a meeting with the workers,
15 right?

16 A. Yes. Almost a year after they had finished that job.

17 Q. Was that the meeting at the restaurant?

18 A. It might have been. I don't have my dates exact, but it
19 might have been.

20 Q. And many workers were there, right?

21 A. Yes, around 20.

22 Q. And do you remember if Mr. Criollo was there?

23 A. Yes.

24 Q. Antonio Torres, was he there?

25 A. Yes.

Dbkgnar2

Rodriguez - cross

1 Q. Mr. Lojano, was he there?

2 A. Yes.

3 Q. Pedro Pablo, was he there?

4 THE INTERPRETER: I'm sorry. Counsel can that name be
5 repeated for the interpreter, please.

6 BY MR. BURKE:

7 Q. Pedro Pablo he was there right?

8 A. Yes.

9 Q. Campoverde, he was there?

10 A. Yes.

11 Q. And were you and Jerry Kraft there?

12 A. No. I was there. Jerry Kraft was not.

13 Q. And did you tell the workers that they could get more
14 money, back-wages?

15 A. Yes.

16 Q. Did you tell them that you were going to have a civil suit
17 against Enviro?

18 MR. JACOBS: Objection.

19 THE COURT: No, I think that I will allow a yes or no
20 answer. You may answer that question yes or no.

21 THE INTERPRETER: Can you repeat the question.

22 THE COURT: The question was did you tell them that
23 you were going to have a civil suit against Enviro.

24 THE WITNESS: No.

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Dbkgnar2

Rodriguez - cross

1 BY MR. BURKE:

2 Q. But you did tell them that they could get more money,
3 correct?

4 MR. JACOBS: Objection.

5 THE COURT: Sustained.

6 BY MR. BURKE:

7 Q. Now, at this meeting you had a camera?

8 A. Yes.

9 Q. A video camera?

10 A. It wasn't mine, but there was a video camera there.

11 Q. And did you interview the workers?

12 A. No.

13 Q. Did anyone interview the workers?

14 A. Yes, other coworkers of mine spoke with the workers.

15 Q. Who was that?

16 A. Luis Montalvo.

17 Q. And were those interviews recorded on video tape?

18 A. Yes.

19 Q. And do you know where those video tapes are?

20 A. No.

21 Q. Now, these video tapes, they were also video and audio,
22 correct?

23 A. Yes.

24 Q. Did you ever listen to them?

25 A. No. I was present there when they were being made.

Dbkgnar2

Rodriguez - cross

1 Q. After these tapes were made, did you ever see them again?

2 A. No.

3 Q. And you have no idea where they are?

4 A. No.

5 Q. Now, on November 3, 2010, did you have another meeting with
6 the workers.

7 A. I don't know what you're referring to, but there could have
8 been a meeting at Local 79.

9 MR. BURKE: May I just approach the witness with a
10 document?

11 THE COURT: Yes.

12 MR. BURKE: Excuse me, Judge.

13 BY MR. BURKE:

14 Q. I want you to think back. Do you remember if there was a
15 meeting on November 3, 2010, with the workers?

16 A. (In English) Yes.

17 Q. Was that a restaurant or the union hall or where it was?

18 A. At the union hall.

19 Q. And was the Department of Labor there?

20 MR. JACOBS: Objection to the line of questioning.

21 THE COURT: Let's have a short side bar.

22 (Continued on next page)

Dbkgnar2

Rodriguez - cross

1 (At the side bar)

2 THE COURT: So, what's the relevance?

3 MR. BURKE: The Department of Labor mentioned, in
4 fact, if I remember correctly, that they did have meetings at
5 the union hall and the union was there. He said he had a
6 meeting with the workers that day. I want to see if he recalls
7 that meeting, if he remembers the Department of Labor being
8 there also.

9 THE COURT: What's the relevance of that?

10 MR. BURKE: The relevance of this is it goes to show
11 this witness' bias and his interest in this case.

12 THE COURT: That's why I allowed the question before
13 about the lawsuit which I thought was otherwise potentially
14 misleading because it did perhaps go to his bias.

15 You've already brought out his relationship to
16 reporting things to the Department of Labor at some length.
17 And in connection with this particular job site, I don't see
18 what his presence at any given meeting adds to his bias.

19 MR. BURKE: You mean with the Department of Labor.

20 THE COURT: Yes.

21 MR. BURKE: Okay.

22 THE COURT: Now, roughly how much more do you have?

23 MR. BURKE: I think 15 minutes, 20 minutes at most.

24 THE COURT: I'll give the jury their midmorning break
25 now then.

Dbkgnar2

Rodriguez - cross

1 MR. DONALDSON: Thank you.

2 (Continued on next page)

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Dbkgnar2

Rodriguez - cross

1 (In open court)

2 THE COURT: The objection is sustained.

3 Ladies and gentlemen, I think this is a good
4 opportunity to give you your midmorning break, so we'll take a
5 15-minute break.

6 (Jury not present)

7 (Continued on next page)

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Dbkgnar2

Rodriguez - cross

(In open court; jury not present)

THE COURT: The witness can go back to the witness room.

(Witness temporarily excused)

THE COURT: Please be seated. Now, is this the government's last witness?

MR. JACOBS: We have one witness after this whose direct should take approximately 30 minutes.

THE COURT: We received the following note from our favorite juror number seven. It reads as follows: Dear Judge Rakoff, in explaining the schedule and process for the balance of the week, you did not say that the defense would present witnesses. Could you explain the rationale for this if it's appropriate to do so? I have not wanted to research this on my own, for obvious reasons.

I think the best way to handle this is since the case is just about finished, the government will rest, unless the defendants at that point change their mind, the defense will then rest. I will remind the jurors at that point that the defense has no obligation to present any evidence whatsoever and that the burden at all times is totally on the government to prove every charge beyond a reasonable doubt.

I think rather than having a separate colloquy with juror number seven, that's the best way to proceed.

Is there any disagreement with that?

Dbkgnar2

Rodriguez - cross

1 MR. JACOBS: No, Judge. Thank you.

2 MR. DONALDSON: No, Judge.

3 MR. BURKE: That's fine, Judge. Forgive me. Then
4 we'll just do a Rule 29 nunc pro tunc once we're done with
5 them?

6 THE COURT: Exactly. We'll see you in 15 minutes.

7 (Recess)

8 (Continued on next page)

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DbkQnar3

Rodriguez - cross

1 (In open court; jury present)

2 THE COURT: Counsel.

3 BY MR. BURKE:

4 Q. Just going back to that meeting of November 3, 2010 at the
5 union hall, Antonio Torrez was there?

6 A. Yes.

7 Q. Mr. Campoverde was there?

8 A. Yes.

9 Q. Mr. Lojano was there?

10 A. Yes.

11 Q. Mr. Creola was there?

12 A. Yes.

13 Q. And Joaquin Pablo was there?

14 A. Yes.

15 Q. I think you also had a meeting with the workers on
16 November 2, 2010. Is that fair to say?

17 A. I don't recall.

18 Q. If you could, sir, just examine that document in front of
19 you. I want you to think back. On November 2, 2010, didn't
20 you meet with some workers?

21 A. Yes.

22 Q. I think it was four -- I'm sorry?

23 A. Yes, looking at this now, I see that I met with some
24 workers.

25 Q. I think it was four of them, correct?

DbkQnar3

Rodriguez - cross

1 A. Yes.

2 Q. I think Angel Lojano was one of those workers, right?

3 A. Yes.

4 Q. After these meetings that we mentioned, the ones in
5 November of 2010, you also had many more meetings with the
6 workers, correct?

7 A. I don't remember how many more there were.

8 Q. But there were several, correct?

9 A. I remember having gone to the Department of Labor with
10 them, but the dates I don't recall.

11 Q. Again, sir, without being too concerned about the date, you
12 had other meetings at the Department of Labor with the workers?

13 A. I always would accompany the workers when they went to the
14 Department of Labor.

15 Q. Would you pick them up?

16 A. No. I waited for them at the place.

17 Q. You also met with the attorney for the Department of Labor,
18 correct?

19 A. Yes.

20 Q. A Ms. Jennifer Huggins?

21 A. Exactly.

22 Q. And you testified at a civil proceeding, correct?

23 A. Yes.

24 Q. These gentlemen here, the folks at this front table here,
25 you've met with them before, right?

DbkQnar3

Rodriguez - cross

1 A. Yes.

2 Q. How many times, do you think? Two times? Three times?

3 A. Four or five times.

4 Q. Now, it's fair to say you also called the police during
5 your activities at 100th Street, didn't you?

6 A. No, I did not call them. Another co-worker called them.

7 Q. You were trying to get them to shut the job down, right?

8 A. No.

9 Q. But you were there when your co-worker called the police?

10 A. Yes, I was there. I mentioned to a co-worker what was
11 going on, and he called the police.

12 Q. On August 17, 2009, you were at the job site and you saw
13 Mr. Naranjo putting up those fliers on the wall of the job
14 site, correct?

15 A. Yes.

16 Q. And those fliers contain the information about --
17 withdrawn.

18 Those fliers were things you were giving out, right?

19 A. Yes.

20 Q. Could the government put up 406? Pointing something out
21 there, sir, the gentleman in the white shirt is you; is that
22 correct?

23 A. Yes.

24 Q. And you're giving out the leaflets?

25 A. Yes.

DbkQnar3

Rodriguez - cross

1 Q. Do you know if there's a picket line that day?

2 A. No.

3 Q. Could I also see 420? Again, sir, that's you, right?

4 A. Yes.

5 Q. And you're giving a flier out to a worker?

6 A. Yes.

7 Q. Do you know if that was the same day as the other picture?

8 A. No.

9 Q. Thank you.

10 Sir, did you at sometime during your activities
11 involving this case, did you do a dumpster dive at Gladiator's
12 office?

13 THE INTERPRETER: The interpreter is going to need an
14 explanation of dumpster dive before I can translate it.

15 Q. Did you inspect the garbage from Gladiator's office at some
16 point?

17 A. No.

18 Q. Did somebody from the union do that, if you know?

19 A. Not as far as I know.

20 MR. BURKE: May I just approach the witness with a
21 document, Judge?

22 THE COURT: Yes.

23 Q. I am just going to ask you to take a look at that document.

24 A. Yes.

25 Q. Just look at the document. After looking at the document,

DbkQnar3

Rodriguez - cross

1 do you have any memory of somebody in the union doing a
2 dumpster dive or looking at the garbage in Gladiator?

3 A. It's possible because it's written down here, and it is my
4 handwriting.

5 MR. JACOBS: Objection.

6 THE COURT: Well, I'm afraid the cat is out of the
7 bag, so to speak, but, all right, go ahead, put another
8 question.

9 Q. Again, I don't mean to press you on this too much. You've
10 seen your notes. Do you have any recollection of you or other
11 union members going through the garbage of Gladiator?

12 A. No.

13 Q. Your investigation on this case took place a long time ago
14 though, right?

15 A. Well, we're talking about four years ago, right?

16 Q. Right. So some of the things you've done, you may have
17 forgotten?

18 A. No, this I had not forgotten because I never did a dumpster
19 dive.

20 Q. Have other union workers done dumpster dives?

21 A. In other places, yes.

22 Q. Did you do a dumpster dive -- withdrawn. But you mentioned
23 that was in your notes, right?

24 MR. JACOBS: Objection.

25 THE COURT: Well, that was inappropriate for him to

DbkQnar3

Rodriguez - cross

1 have mentioned, and I let it stand. I'm not going to allow
2 further questions.

3 MR. BURKE: I understand.

4 Judge, I think I am almost done. Just one moment.

5 Q. If you counted up all the meetings you had about this case
6 with the workers, the Department of Labor, the U.S. Attorney,
7 the Departmen of Labor's attorneys, would that be 40 meetings,
8 50 meetings, any idea?

9 A. No, not that many, but there were a lot.

10 Q. I think you mentioned that you spoke to people in Local 79
11 during this trial.

12 A. Yes.

13 Q. Did you speak to union bosses or workers?

14 A. With workers and with bosses.

15 Q. Did you discuss this trial?

16 A. On the -- specifically about this trial?

17 Q. Well, withdraw that question. Did you discuss this case?

18 A. Yes.

19 Q. What union bosses did you speak to?

20 MR. JACOBS: Objection.

21 THE COURT: Sustained.

22 MR. BURKE: Nothing further, Judge.

23 THE COURT: All right. Redirect?

24 MR. JACOBS: It's Mr. Donaldson, Judge?

25 THE COURT: I'm sorry, Mr. Donaldson. I didn't

DbkQnar3

Rodriguez - cross

1 realize you had cross also. Go ahead.

2 MR. DONALDSON: I'll be brief, your Honor.

3 THE COURT: Take your time.

4 CROSS-EXAMINATION

5 BY MR. DONALDSON:

6 Q. Good morning. I believe on cross you said that your aim is
7 to get the workers to join the union; is that right? Or one of
8 your aims.

9 A. Exactly. That's one of my aims, in order for them to have
10 better benefits and a better lifestyle.

11 Q. How many workers joined the union?

12 THE INTERPRETER: I'm sorry, counsel?

13 MR. JACOBS: Objection.

14 THE COURT: Sustained.

15 Q. Can illegal immigrants join the union?

16 A. Yes.

17 Q. Now on 10/23, October 23, 2010, you said you met with
18 several workers. Did you help any of these workers with
19 filling out any applications?

20 A. Yes, of course. We are always helping them.

21 Q. So would you recall which application you helped them fill
22 out on October 23, 2010?

23 A. Wow, there were so many of them because, unfortunately,
24 they have a lot of difficulties writing, and so I helped them
25 to fill out the forms.

DbkQnar3

Rodriguez - cross

1 Q. Do you recall if you helped them fill out a New York State
2 Department of Labor reclaiming of unpaid wages form?

3 A. Yes.

4 Q. When you were speaking with these workers on these several
5 meetings, you informed them, did you not, that if it can be
6 shown that Enviro violated the law, they can get back wages?

7 A. Yes.

8 Q. And you told them that if they were paid in cash, that
9 would be a violation that could help them get back wages,
10 correct?

11 A. Paying cash can be one of the violations. The violations
12 there were that they were not paying the prevailing wage, the
13 government wage, and they were not being paid overtime.

14 Q. You were in contact with the Department of Labor after you
15 spoke with the laborers, correct?

16 A. I always have contact with the Department of Labor.

17 Q. Let's try it a different way.

18 After you met with the laborers, you would then call
19 the Department of Labor and tell the Department of Labor what
20 the laborers told you, correct?

21 MR. JACOBS: Objection. Form.

22 THE COURT: Sustained as to form.

23 Q. You spoke with the laborers, correct?

24 A. No, I began speaking with the laborers six months after the
25 job was finished.

DbkQnar3

Rodriguez - cross

1 Q. When would that be exactly?

2 A. They did not want to speak with me because they were
3 afraid.

4 Q. I asked you when would that be exactly.

5 MR. JACOBS: Objection. This was covered.

6 MR. DONALDSON: I'll move on, Judge.

7 THE COURT: All right.

8 BY MR. DONALDSON:

9 Q. You said you saw Jover Naranjo at the work site one or two
10 times?

11 A. Yes.

12 Q. When you were out there in the 30 or 40 times, were you
13 ever out there at the same time that the Department of Labor
14 person was there?

15 A. At the work site?

16 Q. Yes.

17 A. Yes.

18 Q. On the day that you were out there when the Department of
19 Labor person was also out there, did you see any laborers
20 running to hide or anything like that?

21 MR. JACOBS: Objection. Foundation. There's
22 testimony on direct indicating where he was.

23 MR. DONALDSON: Just asking if he observed when he was
24 out there if the Department of Labor was there.

25 THE COURT: I'll allow it.

DbkQnar3

Rodriguez - cross

1 THE INTERPRETER: Can I have the question repeated for
2 the interpreter?

3 Q. On the day that you were out there and the Department of
4 Labor person was out there that same day, did you see any
5 laborers running to hide or concealing themselves at all?

6 A. No, I could not see them because I cannot enter the work
7 site, but the investigators said that they spoke with more and
8 more people --

9 MR. JACOBS: Objection.

10 THE COURT: Yes.

11 MR. DONALDSON: I actually have nothing further, your
12 Honor.

13 THE COURT: All right. Any redirect?

14 MR. JACOBS: No, Judge, thank you.

15 THE COURT: Thank you very much. You may step down.

16 (Witness excused)

17 THE COURT: Call your next witness.

18 MR. WIBLE: The government calls David Rosenthal.

19 DAVID ROSENTHAL,

20 called as a witness by the Government,

21 having been duly sworn, testified as follows:

22 DIRECT EXAMINATION

23 BY MR. WIBLE:

24 Q. Good morning, Mr. Rosenthal. Do you mind just moving the
25 microphone a little in front of you?

DbkQnar3

Rosenthal - direct

1 MR. WIBLE: May I approach, your Honor, to move the
2 microphone?

3 THE COURT: Yes.

4 Q. Where do you work?

5 A. I work at New York City Department of Housing Preservation
6 and Development.

7 Q. Is that agency also referred to as HPD?

8 A. Yes, it is.

9 Q. How long have you worked for HPD?

10 A. I've worked for 32 years.

11 Q. What's your current position there?

12 A. I just had a new position of acting co-director of the
13 labor monitoring unit, but I've been a deputy director since
14 2009.

15 Q. What were your duties as a deputy director at the labor
16 monitoring unit?

17 A. As a deputy director, I supervised the compliance officers
18 who handled the monitoring of the prevailing wage law
19 enforcement of HPD construction contracts.

20 Q. Do you require contractors to submit any documents
21 regarding their compliance with the prevailing wage rules?

22 A. Yes.

23 Q. What kind of documents do you require them to submit?

24 A. Essentially, it's payrolls. That's the most important
25 document.

DbkQnar3

Rosenthal - direct

1 Q. Is there a special term you use to describe those payrolls?

2 A. It's -- it's the certified payrolls.

3 Q. What do you do with the certified payrolls after receiving
4 them?

5 A. After we -- after a compliance officer receives the
6 payrolls, they scan the payrolls, they check it for
7 correctness, truthfulness. We send out letters to the workers
8 who are listed on the payrolls. We conduct site visits to the
9 construction site to verify if these employees actually work on
10 the -- you know, as they're noted on the payrolls.

11 Q. What steps do you take if, after you've done all of those
12 things, you've determined that a contractor has not paid the
13 prevailing wage to one or more employees?

14 A. OK. Well, we initiate an investigation, and that entails
15 requesting certain documentation, canceled checks. We send out
16 verification of letters to the -- as I stated, to the
17 employees, and essentially background information concerning
18 the particular payrolls.

19 Q. So if you have conducted an investigation like that, and
20 you've determined that a contractor did not pay the prevailing
21 wage to one or more employees, what steps do you take then?

22 A. OK. We initiate an underpayment. And underpayment means
23 the difference of the payment that the worker received -- it
24 could have been \$10 an hour -- and difference of the prevailing
25 wage rate, which is usually, you know, for example, as a

DbkQnar3

Rosenthal - direct

1 carpenter, they are supposed to be making \$75 an hour. So it's
2 between the \$10 and the \$75, we calculate the difference, and
3 we send the bill, so to speak, to the contractor to pay.

4 Q. Now, are you familiar with the project called the Hobbs
5 Ciena Project?

6 A. Yes.

7 Q. How are you familiar with that project?

8 A. Actually, I was the compliance officer for that particular
9 project.

10 Q. What were you monitoring compliance with for that project?

11 A. Well, the prevailing wage laws.

12 Q. When approximately did you begin monitoring compliance with
13 the prevailing wage laws for that project?

14 A. Just as soon as the construction began. We monitor from
15 demolition, which was July 2009, through the final cleaning,
16 which was sometime in 2011.

17 Q. Did you receive any certified payrolls for a company called
18 Enviro & Demo Masters in connection with the Hobbs Ciena
19 Project?

20 A. Yes, I did.

21 Q. Approximately how many certified payrolls did you receive
22 in total for Enviro Demo?

23 A. In total -- 38, 39, I'm not sure of the exact number.

24 Q. From whom did you receive those certified payrolls?

25 A. I received the payrolls from Lettire Construction. They

DbkQnar3

Rosenthal - direct

1 were the general contractor of record on the site.

2 Q. How frequently did you receive those payrolls?

3 A. Well, essentially four weeks to be six weeks.

4 Q. How did you receive the payroll?

5 A. Oh, by mail, by Federal Express or --

6 Q. Where did you receive those payrolls?

7 A. Oh, we received it in the office. It was sent to 100 Gold
8 Street.

9 Q. Is that here in Manhattan?

10 A. Yes.

11 Q. When you first began receiving those certified payrolls for
12 Enviro & Demo Masters, did you receive any backup documentation
13 with them such as sign-in sheets or copies of canceled checks?

14 A. We received sign-in sheets. That was really about it.

15 Q. Mr. Phillips, could you please pull up on the screen
16 Government Exhibit 204 in evidence.

17 MR. WIBLE: May I approach, your Honor, in case it's
18 easier for the witness to look at a hard copy?

19 THE COURT: Yes.

20 A. I need my glasses.

21 Q. Mr. Rosenthal, do you recognize the first document of this
22 exhibit?

23 A. Yes.

24 Q. What is it?

25 A. That's the certified payroll.

DbkQnar3

Rosenthal - direct

1 Q. Is it a certified payroll for Enviro & Demo in connection
2 with the Hobbs Ciena Project?

3 A. Yes.

4 Q. Mr. Phillips, could you please highlight the entire top
5 row?

6 Mr. Rosenthal, what's listed in the top row of this
7 document?

8 A. The top row is the name of the subcontractor, Enviro & Demo
9 Masters, Incorporated.

10 Q. And what else?

11 A. Their address.

12 Q. Now, can we highlight the second row, please?

13 Mr. Rosenthal, what's shown in that row?

14 A. The payroll number of the -- payroll is a record of the
15 calendar week, and they have had three weeks of work. This was
16 the fourth week, so it's payroll number four.

17 Q. Continuing to move right across the page, what's in the
18 next column?

19 A. And for week ending, that's the week ending of the calendar
20 week worked at Hobbs Ciena.

21 Q. Continuing to move across the page, what's shown next?

22 A. Project and location. They were the subcontractor to the
23 Lettire Construction performing asbestos abatement and interior
24 demolition at the Ciena rehab of the Hobbs Ciena Project on
25 100th Street.

DbkQnar3

Rosenthal - direct

1 Q. I'd like to now focus your attention on the first column
2 below that on the far left-hand side of the page. What's to
3 the left of that?

4 A. That's the race and sex of the particular -- specific
5 employee. And then next would be name, address and social
6 security number of the employee.

7 Q. Mr. Phillips, could you now highlight the third column
8 moving across the table? That column is labeled W.EX.?

9 A. Of withholding exemptions of a specific employee.

10 Q. If you look at the column to the right of that where it
11 says work classification. What's the significance of the
12 information put under the heading work classification?

13 A. That's the type of classification that's listed in the
14 Davis Bacon schedule. That's the schedule of rates that the
15 contractor has to adhere to. And the work classification, one
16 worker performed asbestos abatement work; another demolition
17 tier A, yet another demolition tier B.

18 Q. Let me ask you, what are a demolition tier A worker's
19 duties?

20 A. Tier A demolition, they're responsible for the breaking
21 apart of the walls, the floors. Essentially, it's really the
22 main mechanic of the demolition.

23 The tier B is essentially, they just cart out the
24 construction debris, bring it to the dumpster, and that's
25 really all the duties that they had.

DbkQnar3

Rosenthal - direct

1 Q. How would a supervisor who didn't actually do any labor on
2 a job site be classified according to the prevailing wage rate?

3 A. OK. Well, a supervisor is not really applicable to be paid
4 prevailing wages; only if they work at least 20 percent, you
5 know, of the time worked. So, let's say if the supervisor
6 worked 20 percent, you know maybe three days at maybe 20 hours
7 of -- no, say, ten hours of 40 hours, they would have to be
8 paid prevailing wages.

9 Q. What if they didn't do any labor, would they be required to
10 receive the prevailing wage?

11 A. No, they're not required. It's really to the discretion of
12 the company, of course.

13 Q. I'd like to focus your attention now on the next column to
14 the right where it says OT and ST. What do those abbreviations
15 refer to?

16 A. That means overtime, which is time and a half or double
17 time. And standard, which is the regular rate, regular hours.

18 Q. I'd like to continue moving right across the page.

19 Mr. Phillips, if you could highlight that next column under day
20 and date. What's shown under that heading?

21 A. Well, the day and date is the specific day and the
22 corresponding number -- the day and date.

23 Q. What about just under that through hours work, what's shown
24 in those columns?

25 A. That's the number of the hours that the worker worked on

DbkQnar3

Rosenthal - direct

1 the particular day.

2 Q. Move to the next column to the right, please. Total for
3 period, what's shown?

4 A. That's the total for the period of that calendar week.

5 Q. The total of what?

6 A. The total amount of hours worked.

7 Q. Moving to the right, the next column labeled hourly rate,
8 what does that refer to?

9 A. The hourly rate refers to the specific minimum paid of the
10 prevailing wages that the worker has to receive for the
11 classification worked.

12 Q. What's the hourly rate reflected on this certified payroll
13 for a tier A worker?

14 A. For a tier A worker is \$49.29.

15 Q. For tier B?

16 A. Tier B is \$33.15. And that represents -- there were two
17 specific rates in the prevailing wage schedule for
18 classification. I'm not really sure -- I'm a little sketchy
19 right now. I don't really remember the exact rates, but, for
20 example, \$49.29, you have the base hourly rate of maybe \$30 per
21 hour, and there's a fringe benefit rate attached to it also,
22 which is \$19.29. I'm just approximating.

23 Q. Are you saying that the hourly rates here include both the
24 wages and the benefits?

25 A. Yes. If a contractor does not have a bona fide fringe

DbkQnar3

Rosenthal - direct

1 benefit plan -- and a fringe benefit plan is essentially
2 health, vacation, retirement and annuity -- they can combine
3 both rates into that particular rate, and apply it cash.

4 Q. Moving across the page to the next column, what does gross
5 amount earned refer to?

6 A. That's the calculation of the total hours worked for that
7 calendar week and the hourly rate.

8 Q. Under the next column to the right, deductions, generally
9 what does that refer to?

10 A. The requisite deductions, you know, like for everybody, for
11 federal, state, city government.

12 Q. Tax deductions?

13 A. Tax deductions.

14 Q. What about the next column labeled total deductions, what
15 does that refer to?

16 A. That's the total of all deductions, requisite deductions.

17 Q. In the far column on the right, net amount paid, what does
18 that refer to?

19 A. That's the difference of the gross amount earned and the
20 total deduction, so that's what they'll see in their paycheck.

21 Q. Mr. Phillips, can we turn to page 2 of this exhibit,
22 please?

23 Mr. Rosenthal, what is this document called?

24 A. This is the statement of compliance.

25 Q. What's a statement of compliance?

DbkQnar3

Rosenthal - direct

1 A. A statement of compliance is essentially a certification of
2 the payroll record stating that it's true and accurate, and it
3 must be signed by the principal or payroll manager.

4 Q. Whose name appears on the upper left-hand corner of this
5 statement of compliance?

6 A. Jover Naranjo.

7 Q. Mr. Phillips, can you please blow up paragraph two? Excuse
8 me, paragraph number two, sorry.

9 MR. WIBLE: Your Honor, may I read the paragraph
10 aloud?

11 THE COURT: Yes.

12 MR. WIBLE: (2) That any payrolls otherwise under this
13 contract required to be submitted for the above period are
14 correct and complete; that the wage rates for laborers or
15 mechanics contained therein are not less than the applicable
16 wage rates contained in any wage determination incorporated
17 into the contract; that the classifications set forth therein
18 for each laborer or mechanic conform with the work he
19 performed.

20 Thank you, Mr. Phillips.

21 If you would now on the right-hand side of the page at
22 the top, would you blow up paragraph beginning with B to the
23 end of that paragraph.

24 Your Honor, may I read this paragraph aloud to the
25 jury?

DbkQnar3

Rosenthal - direct

1 THE COURT: Yes.

2 MR. WIBLE: (B) where fringe benefits are paid in
3 cash. Each laborer or mechanic listed in the above-referenced
4 payroll has been paid, as indicated on the payroll, an amount
5 not less than the sum of the applicable basic hourly wage rate
6 plus the amount of the required fringe benefits as listed in
7 the contract, except as noted in section 4(c) below.

8 Mr. Phillips, you can go back out to the full
9 document.

10 Q. Mr. Rosenthal, according to this certified payroll, did
11 Enviro & Demo offer its workers on this project a health
12 insurance plan?

13 A. No.

14 Q. According to this certified payroll, how were Enviro
15 employees being paid for fringe benefits?

16 A. In cash. Did I say before that they can combine the fringe
17 benefit rate and the base rate?

18 Q. Now, looking in the lower right-hand corner of this
19 document, whose name is typed next to the signature line?

20 A. Jover Naranjo.

21 Q. What title is listed under his name?

22 A. President.

23 MR. WIBLE: Your Honor, may I read aloud the text that
24 appears by his signature?

25 THE COURT: Yes.

DbkQnar3

Rosenthal - direct

1 MR. WIBLE: The willful falsification of any of the
2 above statements may subject the contractor or subcontractor to
3 civil or criminal prosecution. See Section 1001 of Title 18
4 and section 231 of Title 31 of the United States Code.

5 Q. Mr. Phillips, can you just briefly flip to the next page
6 and page 4 as well. You can take that down.

7 Mr. Rosenthal, I believe you mentioned earlier there's
8 something called a verification letter. Did you send out any
9 such letters to Enviro Demo employees in connection with the
10 Ciena Project?

11 A. Yes, I did.

12 Q. How did you send those letters out?

13 A. By regular mail.

14 Q. Where did you send the letters from?

15 A. The letters from our office 100 Gold Street.

16 Q. Where did you get the addresses for the workers to whom
17 those letters were sent?

18 A. From the payrolls or the site visits that we conducted --
19 site interviews, I mean.

20 Q. Did you ever go to the job site on East 100th Street to
21 conduct interviews?

22 A. Yes.

23 Q. How many times did you go there?

24 A. I went there twice.

25 Q. When did you go there?

DbkQnar3

Rosenthal - direct

1 A. I went there August 2009 and March 2011.

2 Q. Do you remember the specific date in August 2009?

3 A. I believe it was August 23, 2009.

4 Q. Are you positive of the date?

5 THE COURT: Sustained.

6 MR. DONALDSON: Objection, Judge. Sorry.

7 BY MR. WIBLE:

8 Q. Focusing your attention on the August visit, did you go
9 alone or with others?

10 A. I went with others. We usually go out as a team.

11 Q. What did you -- how many people did you go with, do you
12 recall?

13 A. One other -- one other person.

14 Q. What did you and the other compliance officer do at the job
15 site that day?

16 A. Well, we interviewed the workers, asked them if they
17 received -- well, what their rate of pay was, their duties,
18 their address, how long they've been on the job site, and it's
19 the standard HUD 11 letter, interview -- interview record.
20 It's developed by HUD which is the Department of Housing and
21 Urban Development.

22 Q. Mr. Phillips, can we pull up --

23 THE COURT: Counsel come to side bar.

24 (Continued on next page)

DbkQnar3

Rosenthal - direct

1 (At the side bar)

2 THE COURT: It was represented repeatedly by the
3 government that this witness' direct testimony would be ten
4 minutes. It's been 20 minutes and it doesn't seem to be
5 anywhere near conclusion. How much more do you have?

6 MR. JACOBS: Judge, I'm sorry. I thought I said he
7 was 30 minutes yesterday.

8 THE COURT: I'm sorry. I must have misheard. That's
9 fine then. My apologies.

10 MR. WIBLE: We are getting near the end.

11 THE COURT: Good.

12 (Continued on next page)

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DbkQnar3

Rosenthal - direct

1 (In open court)

2 MR. WIBLE: May I have one moment, your Honor?

3 THE COURT: Yes.

4 BY MR. WIBLE:

5 Q. Mr. Phillips, would you pull up Government Exhibit 204, the
6 first page, please?

7 Mr. Rosenthal, did you and the compliance officer
8 interview any of the people listed on this certified payroll
9 when you went to the job site in August of 2009?

10 A. Yes.

11 Q. Which of these people did you interview?

12 A. Well, it's been four years ago. I believe maybe Edgar
13 Avila. I think that's all for this page.

14 Q. Turn to the third page, please.

15 A. Manuel Pereda, Milton Barahona, and I believe Pedro
16 Orellana. I'm a little sketchy.

17 MR. WIBLE: Thank you. You can take that down.

18 Q. Did you and the compliance officer interview any additional
19 workers that day other than the ones you just named?

20 A. Yes. Yes, we did.

21 Q. How many?

22 A. We interviewed three additional workers.

23 Q. Did those workers provide names to you?

24 A. Yes.

25 Q. Did Jover Naranjo subsequently provide you with additional

DbkQnar3

Rosenthal - direct

1 information about the names for those workers?

2 A. Yes.

3 Q. What information did he provide?

4 A. Their actual name -- they stated their names to us in the
5 interview. When we prepared the underpayment stating that they
6 were never paid for the job, they weren't on the payrolls, and
7 we just sent him the underpayment. He sent back a letter
8 stating we will the underpay, the fees of the people that you
9 actually interviewed, and they were totally different names.

10 Q. What were the three names Jover Naranjo provided you?

11 A. Well, we interviewed Janet Feidal.

12 MR. DONALDSON: Objection, your Honor. It's
13 non-responsive to the question.

14 THE COURT: Sustained.

15 Q. Mr. Rosenthal, I'm asking you a very specific question.
16 What were the three names that Jover Naranjo provided you in
17 the letter that you described?

18 A. Gloria Fiejo and Joaquin Pablo, and there was another
19 Pablo, the first name I forget.

20 Q. Mr. Phillips, could you please pull up page 3 of Government
21 Exhibit 204? Do any of those names appear on the certified
22 payroll?

23 A. Actually, they do.

24 Q. Which ones?

25 A. I see now Joaquin Pablo, Pedro Pablo and -- let's see.

DbkQnar3

Rosenthal - direct

1 Q. Mr. Phillips, can you turn to page one, please?

2 A. And Gloria Fiejo.

3 Q. Thank you. You can take that down.

4 Did you see Jover Naranjo at the job site when you
5 went there in 2009?

6 A. No, I did not.

7 (Continued on next page)

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Dbkgnar4

Rosenthal - direct

1 BY MR. WIBLE:

2 Q. What about the Luperio Naranjo Sr.?

3 A. Luperio, I did.

4 Q. What did you observe him do?

5 A. He was supervising the workers.

6 Q. Did you observe him doing any labor?

7 A. No, not at that point.

8 MR. WIBLE: May I just have one moment, your Honor.

9 THE COURT: Yes.

10 MR. WIBLE: Thank you, no further questions.

11 THE COURT: Cross examination.

12 MR. DONALDSON: Yes, your Honor.

13 CROSS-EXAMINATION

14 BY MR. DONALDSON:

15 Q. Good afternoon.

16 A. Good afternoon.

17 Q. I'll be brief and ask you as few questions as I can.

18 You mentioned that you were on the site sometime in
19 August 2009 for the first time and that you interviewed some
20 persons; is that correct?

21 A. Exactly.

22 Q. And then there were some names that didn't match with the
23 payroll; is that what you said?

24 A. Well, workers -- and this happens often with a lot of
25 contractors where they have workers on the job site and they

Dbkgnar4

Rosenthal - cross

1 don't appear on the payrolls.

2 Q. It happens often?

3 A. Exactly. And we have to inquire why exactly inquire why
4 they weren't on the payrolls.

5 Q. And when you find some type of, I guess the word would be
6 conflict, you send some type of underpayment?

7 A. Exactly.

8 Q. And you said you observed Luperio Naranjo on the site that
9 day?

10 A. Yes.

11 Q. And you observed him supervising?

12 A. He was -- in the capacity as I saw, he was supervising. He
13 was not doing any manual work.

14 Q. You didn't send any underpayment for what he was doing,
15 correct?

16 A. Well, he was on the payrolls as a laborer, but the thing
17 is, I did not see him do any work, but he could have done work,
18 let's say, before.

19 Q. So, you saw him there?

20 A. But he was in the capacity of a supervisor.

21 Q. So, you saw him there. You reviewed the paperwork
22 associated with the payrolls and you did not issue an
23 underpayment for Mr. Luperio Sr. Would that be correct?

24 A. No, I saw him on the payrolls; he identified himself.

25 Q. Now, does the subcontractors -- before we get to that.

Dbkgnar4

Rosenthal - cross

1 Enviro would be considered a subcontractor, correct?

2 A. Subcontractor of the GC.

3 Q. Of the GC.

4 The subcontractors, do they have to submit any or sign
5 any documents or submit documents to HPD directly?

6 A. Well, the payroll, payroll records.

7 Q. Besides the payroll do they have to send any contracts with
8 the HPD?

9 A. Well, they do fill out -- they do have a subcontract with
10 Lettire Construction, of course.

11 Q. But not directly with HPD, correct?

12 A. Not directly with HPD, no.

13 Q. Prior to going out to the site, to the Hobbs Ciena site,
14 did you review any of the contracts between Enviro and Lettire?

15 A. Meaning?

16 Q. Did you review the subcontract between Enviro and Lettire
17 prior to you visiting the site?

18 A. Well, that's not really needed because we know that they're
19 doing asbestos. They have the subcontract for asbestos and
20 demolition so we know.

21 Q. Did you review the contract between Lettire and Enviro
22 prior to you going to the site?

23 A. No, and there was no need to.

24 Q. Do you know if HPD requires the subcontractors to provide
25 any employee lists to the GC prior to executing the contract

Dbkgnar4

Rosenthal - cross

1 between the GC and the subcontractor?

2 A. Executing the contract on -- no, but the thing is, there's
3 a certain -- there was a new type of sign-in/sign-out at the
4 job site, so -- and I believe there was a card record, it's
5 card activity. So I believe they had to submit some records to
6 Lettire.

7 Q. There's a new sign-in/sign-out where?

8 A. Oh, at the Hobbs Cien. That was implemented by Lettire.

9 Q. When was that implemented?

10 A. During the course of the project.

11 Q. During the course of the project?

12 A. The course of the project. I'm not really sure if it began
13 in August 2009, but it did begin maybe in the fall of 2009.
14 I'm not really sure.

15 Q. Would it be fair to say that this new sign-in/sign-out
16 procedure began sometime in December of 2009?

17 A. You could say that.

18 Q. Now, when you visited the site in August 2009, did you see
19 or observe any of the general contractor's employees there?

20 A. We did.

21 Q. Who was that?

22 A. The general contractors?

23 Q. Yes.

24 A. The specific employees?

25 Q. You just said you observed some.

Dbkgnar4

Rosenthal - cross

1 A. Yeah, we did see the specific employees of Lettire
2 Construction, of course.

3 Q. At the 100th Street site in August?

4 A. At the 100th street site, exactly.

5 Q. Do you know which employees that was?

6 A. Not right now.

7 Q. Is it required that the general contractor have a project
8 manager or someone at the site?

9 A. Oh, of course.

10 Q. Was there a project manager there at the site on the August
11 date that you visited?

12 A. Yes.

13 Q. Do you recall that person's name being Mike Odessa or Mike?

14 A. I believe it was Mike, yes.

15 Q. You know who Mike is?

16 A. I know who Mike is.

17 Q. In August 2009, Mike was at the site?

18 A. Yeah, this was four years ago. And I believe he was at the
19 site.

20 Q. And he's supposed to be there because he's supposed to be
21 monitoring the site for the general contractor, correct?

22 A. For Lettire, the general performance of each and every
23 subcontractor.

24 Q. Right. So I guess what I'm saying is, there is supposed to
25 be a project manager or person representing the general

Dbkgnar4

Rosenthal - cross

1 contractor at the site monitoring the subcontractor activities;
2 correct?

3 MR. WIBLE: Objection to this line of questioning.

4 THE COURT: Sustained.

5 BY MR. DONALDSON:

6 Q. Now, you mentioned on -- could you put up 204, please, the
7 first page.

8 In the name, address, and Social Security number
9 column, it's required for -- well, it says name, address, and
10 Social Security number, correct?

11 A. Yes.

12 Q. And is this a Department of Labor form. Let me rephrase
13 the question.

14 Is this a Department-of-Labor-generated form?

15 A. Okay. It's a similar -- it's not the exact WH347, but, of
16 course, they have the option of providing an optional payroll
17 with the same components as WH347. But of course, the
18 statement of compliance, which is on the reverse side, must be
19 there, of course.

20 Q. Is the same.

21 And the WH347 has a requirement for the name, address,
22 and Social Security number, correct?

23 A. In the past few years, they only had the name and last four
24 digits of the Social Security number. This is essentially an
25 old form, but they have the discretion, the contractor has the

Dbkgnar4

Rosenthal - cross

1 discretion of providing these materials. We also have the
2 discretion of asking for the full address of the worker, plus
3 the full Social Security number on top of that.

4 So him providing this information was fine.

5 Q. I guess my question then is for the 347 form, I believe you
6 said the old and new form, it still requires the name and
7 either the Social Security number or the last four digits of
8 the Social Security number, is that correct?

9 A. Yes.

10 Q. And the reason for that is what?

11 A. The reason for the identification of the worker performing
12 work on the job site.

13 Q. And the reason for the Social Security number is what?

14 A. The reason for the Social Security number is their
15 identification, their Social Security number identification.

16 MR. DONALDSON: Can I have one second, please, your
17 Honor.

18 THE COURT: Yes.

19 MR. DONALDSON: I don't have anything further.

20 THE COURT: Mr. Burke.

21 MR. BURKE: No questions.

22 THE COURT: Redirect?

23 MR. WIBLE: No, your Honor. Thank you.

24 THE COURT: Thank you very much. You may step down.

25 (Witness excused)

Dbkgnar4

1 MR. JACOBS: Our last piece of evidence is we have a
2 stipulation to read. It will take three or four minutes. And
3 with the Court's permission, we'd like to have Agent Sisas and
4 Mr. Phillips read it in the form of question and answer that
5 were given in a prior proceeding.

6 THE COURT: Wait a minute.

7 MR. BURKE: I'm requesting the Court's permission the
8 same limiting instructions we've had for other statements. I
9 think it's applicable.

10 THE COURT: These relate to --

11 MR. JACOBS: Mr. Jover Naranjo.

12 THE COURT: Pardon?

13 MR. JACOBS: These are statements Mr. Jover Naranjo
14 gave.

15 THE COURT: Ladies and gentlemen, you can consider
16 them only as to Jover Naranjo, not as to the codefendant.

17 MR. JACOBS: Could we also display the document at the
18 time as it's being read.

19 THE COURT: Sure.

20 MR. JACOBS: I'm going to read the beginning language
21 and then Agent Sisas and Mr. Phillips will begin.

22 Government Exhibit 1003: The parties stipulate that
23 if called as a witness, a shorthand reporter and notary public
24 of the State of New York would testify that the following is a
25 true record of portions of the testimony Jover Naranjo, the

Dbkgnar4

1 defendant, gave under oath in connection with a prior
2 proceeding in November 2011.

3 Agent Sisas will read the lines marked question and
4 Mr. Phillips will read the lines marked answer.

5 Please begin.

6 "Q. How many categories of workers did you have at the Ciena
7 site?

8 "A. Three.

9 "Q. Name them please?

10 "A. Demolition laborer Tier A, demolition laborer Tier B, and
11 asbestos worker. Or asbesto abatement worker. Something like
12 that.

13 "Q. What is the difference between a Tier A and Tier B
14 demolition worker?

15 "A. A is the one that breaks the walls and B is the one that
16 takes out the garbage.

17 "Q. Felix was a Tier A?

18 "A. No, he was B.

19 "Q. Who gets paid more money, Tier A or Tier B?

20 "A. A.

21 "Q. How did you learn the differences between Tier A and Tier
22 B workers?

23 "A. That's in the schedule. Normally they put it in the
24 contract.

25 "Q. Was it in the contract that you had on the Ciena project?

Dbkgnar4

"J. Naranjo"

1 "A. In the beginning no, but the following week, yes, he gave
2 it to me.

3 "Q. But at the time you signed it, did you know that you had
4 to categorize workers as Tier A or Tier B?

5 "A. Yes.

6 "Q. When did you first hear about the terms Tier A and Tier B
7 demolition laborers?

8 "A. Around '89.

9 "Q. In '89 was that a Federal prevailing wage job?

10 "A. I believe so.

11 "Q. So you've been doing Federal prevailing wage jobs since
12 approximately 1998?

13 "A. I believe so, yes.

14 "Q. When was Enviro & Demo Masters formed?

15 "A. Around 2004 or 2005 I believe.

16 "Q. Before there was Enviro & Demo Masters, you knew about the
17 different categories of workers and their pay for the Federal
18 prevailing wage jobs?

19 "A. Yes.

20 "Q. How do you know how much to pay a Tier A demolition
21 laborer?

22 "A. By their schedule.

23 "Q. How often do those schedules change?

24 "A. In the state you have to pay according to how they are
25 updated. You have to check when they change. But in Federal

Dbkgnar4

"J. Naranjo"

1 prevailing wage, you don't have to change - you don't have to
2 check when they change, it is whenever it is you sign the
3 contract.

4 "Q. So when did you learn what the rate was for Tier A or Tier
5 B workers for the Ciena Project?

6 "A. When they told me it was prevailing wage, I knew more or
7 less what was going to apply because I was doing other
8 prevailing wage.

9 "Q. Let's take a step back. When did you first learn that the
10 Department of Labor had been at the Ciena site?

11 "A. I think the first time they were there was the first week
12 in September.

13 "Q. Are there bylaws for Enviro & Demo Masters Incorporated?

14 "A. I believe so.

15 "Q. If you are the only officer, why are you not sure?

16 "A. I believe so, I believe it is yes because I was certified
17 for minorities for the State and for the City and they ask for
18 that.

19 "Q. Did you only create the bylaws so you can be certified for
20 minorities?

21 "A. I didn't say it was for that. I said you have to have
22 that.

23 "Q. Who is the secretary for Enviro & Demo Masters?

24 "A. I believe I am. I think I do everything.

25 "Q. Are you also the bookkeeper?

Dbkgnar4

"J. Naranjo"

1 "A. Yes.

2 "Q. How often do you have elections for Enviro & Demo Masters?

3 "A. No, I am like Fidel, there are no elections.

4 "Q. Are there any shareholders for Enviro & Demo Masters?

5 "A. No, only myself.

6 "Q. How much have you earned in dividend payments as president
7 of Enviro & Demo Masters?

8 "A. I do not recall. I would have to look.

9 "Q. Who has the authority to sign checks on behalf of Enviro &
10 Demo Masters?

11 "A. Only myself.

12 "Q. I'm going to go over some names and I would like you to
13 identify who these people are. Who is Marcia Gonzalez?

14 "A. My sister.

15 "Q. She's Luperio's daughter as well?

16 "A. Yes.

17 "Q. How many siblings do you have?

18 "A. I believe seven.

19 "Q. How many of them have worked for Enviro & Demo?

20 "A. Only my brother and my two sisters I believe.

21 "Q. What is the other sister's name?

22 "A. Jessica.

23 "Q. Who at Enviro was responsible for preparing the weekly
24 payroll in the Ciena Project?

25 "A. Myself.

Dbkgnar4

"J. Naranjo"

1 "Q. Are you the only one that has ever signed any of these
2 certified payrolls on behalf of Enviro at the Ciena Project?

3 "A. Yes.

4 "Q. Are you able to read in English?

5 "A. Yes.

6 "Q. You did sign the certified payrolls for work done on the
7 Enviro subcontract?

8 "A. Yes.

9 "Q. When did you first ever work on prevailing wage job sites?

10 "A. The first job that I got was prevailing wage.

11 "Q. On that job, what was your role?

12 "A. We were very small there and I was doing everything there.

13 "Q. What was the name of the company that had that first
14 prevailing wage contract with?

15 "A. We did it for a school, it was for East Coast Construction
16 in the Bronx.

17 "Q. What company were you working for at the time?

18 "A. For Triple N.

19 "Q. How did you learn about prevailing wages?

20 "A. The G.C. explained it to me more or less and there you had
21 to turn in payroll and everything else. It was a school.

22 "Q. How many Federal prevailing wage jobs have you worked on
23 since that school project in the Bronx?

24 "A. I don't know exactly but I think that State jobs and the
25 City jobs do not count like the Federal ones I think. Just

Dbkgnar4

"J. Naranjo"

1 Federal?

2 "Q. Just Federal.

3 "A. I would say it's a minimum 30.

4 "Q. How did you come up with the price, the bid amount for the
5 Ciena Project?

6 "A. Like I would put a price on all the jobs. Measuring the
7 building and calculating the square footage.

8 "Q. How does that translate into a dollar figure?

9 "A. Multiplying it.

10 "Q. Multiplying what by what?

11 "A. My price by the square footage for demolition by the
12 square footage that had to be worked.

13 "Q. What is your price?

14 "A. Nonprevailing wage, five to six dollars square foot.
15 Prevailing wage, eight to nine dollars a square foot. That's
16 it.

17 "Q. How did you come up with the figure that for prevailing
18 wage it should be eight to nine dollars per square foot?

19 "A. Because the laborer in prevailing wage is more expensive.

20 "Q. In the eight or nine dollars per square foot, what
21 percentage of that is for wages paid?

22 "A. Calculating for another way for payroll is about 35
23 percent but because the payroll expenses do not end there.
24 There are things that are paid based on payroll like Social
25 Security, Medicaid, workers comp. insurance, so labor costs go

Dbkgnar4

"J. Naranjo"

1 there. It could be up to 45 percent or more.

2 "Q. So 45 percent of the eight or nine dollars per square feet
3 is attributed to payroll costs?

4 "A. Yes.

5 "Q. Now, for the Ciena project, how much did you ultimately
6 get the contract for?

7 "A. Like I don't remember. I think it was 785,000 plus 70,000
8 for the asbestos."

9 MR. JACOBS: Thank you, Agent Sisas and Mr. Phillips.
10 The government at this time offers Government Exhibit
11 1003.

12 THE COURT: Received.

13 (Government's Exhibit 1003 received in evidence)

14 MR. JACOBS: At this time, the government rests.

15 THE COURT: Let me hear from counsel for the defense.

16 MR. DONALDSON: Regarding Jover Naranjo, we have no
17 witnesses to call.

18 MR. BURKE: Luperio Naranjo rests.

19 THE COURT: Ladies and gentlemen, first let me advise
20 you that the defense has no obligation to put on any case
21 whatsoever. The firm principle for our criminal law is that
22 the burden is always on the government to prove any criminal
23 case beyond a reasonable doubt. So you should not infer
24 anything whatsoever from the fact that the defense chose not to
25 call witnesses. That is their Constitutional prerogative and

Dbkgnar4

"J. Naranjo"

1 cannot be held against them in any way, shape, or form.

2 We have, therefore, now completed the evidence in this
3 case, so we're going to break for today. Tomorrow at 9:00 we
4 will hear closing arguments of counsel, followed by my
5 instructions of law, and the case will then be yours to
6 deliberate.

7 Have a very good day, and we will see you tomorrow at
8 9:00.

9 (Jury excused)

10 (Continued on next page)

Dbkgnar4

"J. Naranjo"

(In open court; jury not present)

THE COURT: Next we will hear any Rule 29 motions which will be deemed to have been made both at the close of the government's case and at the close of the entire case.

Any motions from defense counsel?

MR. BURKE: On behalf of Luperio Naranjo, I'm going to ask the Court to enter a judgment of acquittal on each count in the indictment, Judge. I believe it's our position that the evidence, even taken in the best light for the government, would not be sufficient for this case to go to the jury. We're asking for a judgment of acquittal.

THE COURT: You would be negligent not to have made that motion, and I would be committing malpractice not to deny it, so the motion is denied.

MR. DONALDSON: Your Honor, I join my cocounsel. I believe a judgment of acquittal is appropriate for Mr. Jover Naranjo. I do not believe the government met its burden of proof of the elements of the six of these counts.

Specifically, I think we have to make a specific request regarding certain counts for the mail fraud count. We do not believe that the government proved the third element of the count and that is that a mailing occurred in the execution of that scheme. Based upon that and the record, we file our Rule 29 motion.

THE COURT: Thank you very much. That motion is also

Dbkgnar4

1 denied.

2 Let's turn to the instructions of law, the proposed
3 charge to the jury. Are there any objections or additions from
4 the government on the general instructions one through eight?

5 MR. JACOBS: No, your Honor.

6 THE COURT: Any objections or additions on the general
7 instructions from defense counsel?

8 MR. BURKE: Yes, and that's this, Judge, it's one of
9 my personal sticking points, but I respectfully object to the
10 circumstantial evidence charge.

11 THE COURT: The one that's been given in this court
12 for about a hundred years.

13 MR. BURKE: How ever long ago. This was a defense
14 charge which would charge - and this is before I started doing
15 this even, that's a long time ago - they'd say, look,
16 circumstantial evidence is okay, but you must have proof beyond
17 a moral certainty. That's way gone by the way.

18 Our objection is not really to the language of the
19 charge itself. It's all fine. It's these examples. What
20 happens with the examples is that it tilts the power of the
21 charge and it makes it really a government or prosecution
22 charge.

23 Let me take the Court's example, for instance. And
24 I'm paraphrasing. You know your charge backwards and forwards:
25 Essentially, you're in a courtroom. You can't see outside.

Dbkgnar4

1 People come in, they're dripping wet. The umbrellas are wet.
2 You may be able to tell that it's raining outside. What's our
3 objection? This is a very strong example of circumstantial
4 evidence.

5 Another one which you don't seem to be giving is you
6 go to sleep, you wake up, there's no snow on the ground, even
7 though you didn't see it snow. Out of circumstantial evidence,
8 that would convince you that it did snow outside.

9 What I'm saying is this: The government is always or
10 usually the people who have the circumstantial evidence and
11 that's what makes the inference so strong. And I think it's
12 inappropriate because of the example. I submitted a different
13 type of charge to the Court, but essentially it was from Judge
14 Batts in a case I did a while ago.

15 My recollection is in that case, they give the same
16 example of the rain and umbrellas, but she also gives another
17 example of circumstantial evidence, again, I'm paraphrasing it:
18 You're at a train stop, it's late at night, you may think
19 that's because a train just hasn't come yet. It could be
20 because the movies let out. It could be because the train has
21 broken down. There are different inferences to be taken from
22 that circumstantial evidence which are not as strong as the
23 example with the raincoats.

24 It's our position that once the Court gives that
25 example with the raincoats and the umbrellas, that's like

Dbkgnar4

1 telling the jury circumstantial evidence is gold and it just
2 tilts the charge. And that's my request and that's our
3 position.

4 THE COURT: That's very interesting. My recollection
5 is that in approximately 1970 or so, Judge Griesa experimented
6 with trying to alter the circumstantial evidence charge and was
7 summarily reversed by the Second Circuit; whereas, the charge
8 that I give is one that has been heard literally in the
9 courthouse as long as anyone can remember.

10 Moreover, I disagree with several of your premises.
11 First, often it is the defense that seeks to draw inferences,
12 sometimes extended inferences, of a circumstantial nature from
13 the evidence. So, as a factual matter, it's not been my
14 experience that this favors one side or the other, quite to the
15 contrary.

16 I wouldn't be surprised if, in this very case, it will
17 be the defense that will more rely on arguments from
18 circumstantial evidence than the government. More importantly,
19 I think that giving multiple examples is likely to inject
20 confusion rather than to be helpful to a jury.

21 My main beef, if you will, with the jury instructions
22 that are sometimes heard in this courthouse is that they are
23 far too long, far too complicated. Relatively simple concepts
24 become confused because the jury hears so many different
25 formulations of the same thing that they think there must be

Dbkgnar4

1 some esoteric aspect to it that they may have missed. The
2 concept of inference from circumstantial evidence is something
3 that people do every day of their lives.

4 To my mind, the most important part of my instruction
5 is where I tell them after giving the example that "Using your
6 reason and experience, you infer from established facts the
7 existence or the nonexistence of some other fact. Please note,
8 however, that it is not a matter of speculation or guess. It
9 is a matter of logical inference." And that is the key.

10 That, to my mind, conveys to them much more simply and
11 straightforwardly the difference between circumstantial
12 evidence properly used and circumstantial evidence improperly
13 used.

14 I'm delighted you raise this interesting question. It
15 hasn't been raised in my court before, but I decline the
16 invitation.

17 Any other objections or additions to instructions one
18 through eight?

19 MR. DONALDSON: No.

20 MR. BURKE: No.

21 THE COURT: Very good.

22 Let's turn to the more substantive instructions. Any
23 objection or addition from the government to instruction number
24 nine, the mail fraud?

25 MR. JACOBS: Yes. Two small points on page 13 of the

Dbkgnar4

1 draft we received.

2 THE COURT: Yes.

3 MR. JACOBS: In the first full paragraph in the
4 second-to-last line, we would ask the Court to delete the words
5 "federally funded."

6 THE COURT: They may think that that's somehow a
7 requirement.

8 MR. JACOBS: Yes.

9 THE COURT: Yes. I will delete that.

10 MR. JACOBS: Then in the first sentence of the next
11 paragraph, I believe the testimony is that the certified
12 payrolls were Fed-Ex'd, so we would ask in addition to U.S.
13 Mails, your Honor, add or "private or commercial interstate
14 carrier" or something along those lines.

15 THE COURT: The first sentence of the final paragraph
16 will now read "As to the third element - that in the execution
17 of the scheme to defraud, at least one mailing was made
18 (including in this category not only the U.S. Mails, but also
19 private interstate carriers like Federal Express.)"

20 Anything else?

21 MR. JACOBS: Not on this instruction, Judge. Thank
22 you.

23 THE COURT: Anything from defense counsel on
24 instruction number nine?

25 MR. BURKE: On number nine?

Dbkgnar4

1 THE COURT: Nine, yes.

2 MR. DONALDSON: No.

3 THE COURT: Let's turn to instruction number ten, the
4 conspiracy to commit mail fraud.

5 Any additions or suggestions or objections from the
6 government on instruction number ten?

7 MR. JACOBS: Yes. First in the last paragraph of page
8 14, this is a small point, but where it says "in or about
9 August 2009 and continued up to," it should be "in or about
10 February 2010."

11 THE COURT: Yes. Thank you.

12 MR. JACOBS: Also just point out that on this page
13 where it says "Second, that the defendant you are considering
14 knowingly and willfully joined the conspiratorial agreement,"
15 which the government agrees is appropriate here, but then on
16 the next page, turning to 15, we would ask --

17 THE COURT: I don't have the indictment right in front
18 of me. What language is in the indictment?

19 MR. JACOBS: The indictment charges knowingly and
20 willfully.

21 THE COURT: Knowingly and willfully. And unlawfully?

22 MR. JACOBS: No. We stopped using the word unlawfully
23 in indictments maybe two years ago, except where it's in the
24 statute itself.

25 THE COURT: That's good.

Dbkgnar4

1 MR. JACOBS: I have language your Honor used in a
2 prior case charging knowingly and willfully. And we ask that
3 the language on page 15 beginning with "If you conclude"
4 through that paragraph down to the paragraph that begins "In
5 this regard" be replaced with that language.

6 THE COURT: Was that in your requested charge?

7 MR. JACOBS: I believe our requested charge had
8 knowingly and willfully, but your Honor's charge I think is
9 superior. It's bracketed onto the next page. And that's from
10 *U.S. v. Donald*.

11 THE COURT: Let me read that so defense counsel is
12 aware of that proposed change.

13 "As to the second element the defendant knowingly and
14 willfully charged in the conspiracy. To act knowingly means in
15 this context to act consciously and deliberately rather than
16 mistakenly or inadvertently. And to act willfully in this
17 context means to act voluntarily, purposefully, and with
18 knowledge of an intent to do something unlawful. Thus, the
19 defendant enters into a conspiracy knowingly and willfully if
20 he joins the conspiracy deliberately, purposely, and with
21 knowledge of an intent to further one or more of the
22 conspiracy's unlawful objectives."

23 So reading that, I would change it slightly. The
24 conspiracy here is a conspiracy to commit mail fraud. And
25 that's the only object. It should be "to act willfully in this

Dbkgnar4

1 context means to act voluntarily, purposely, and with an intent
2 to defraud." And I'll change the second sentence
3 correspondingly.

4 With that proposed change, is there anything else from
5 the government?

6 MR. JACOBS: Briefly, the word "intentionally" as it
7 appears in two instances on page 15 and 16, and we ask it be
8 replaced with "knowingly and willfully."

9 The first instance is in the second-to-last line of
10 page 15, and the other instance is in the second-to-last
11 paragraph of page 16.

12 THE COURT: No, because I have now defined willfully
13 in terms of intent.

14 MR. JACOBS: That's fine, then.

15 THE COURT: I don't think that change needs to be
16 made. Intentionally is a much more common word, much more
17 familiar with the jury than willfully, so I will leave that as
18 it is.

19 Anything on instruction ten from the defense?

20 MR. DONALDSON: No.

21 THE COURT: Mr. Burke.

22 MR. BURKE: No, your Honor.

23 THE COURT: Very good.

24 On instruction number 11, anything from the
25 government.

Dbkgnar4

1 MR. JACOBS: Yes. In this regard, in our request,
2 venue is proper for this charge if either the efforts to
3 influence testimony occurred in the district or if the official
4 proceeding was to be conducted here.

5 Some portions of the evidence reflect efforts to
6 influence testimony, particularly Jover Naranjo's conversations
7 with employees, that may have taken place in the Enviro office
8 in Queens, they were outside the district.

9 We would propose for this charge that the words "in
10 the Southern District of New York" be struck from the second
11 paragraph.

12 THE COURT: Yes.

13 MR. JACOBS: Then a final paragraph be added - and
14 this was in our request - that says simply "Finally, the
15 government must prove that it's more likely than not either
16 that the efforts to influence testimony occurred in the
17 Southern District of New York or that the official proceeding
18 was to be conducted here."

19 THE COURT: I would give that, except for the part
20 about "more likely than not."

21 Obviously, if you want that, you're entitled to it,
22 but that means I have to tell the jury that there's a separate
23 thing called venue, that preponderance of the evidence applies
24 rather than reasonable doubt.

25 In virtually every case, venue is probably the element

Dbkgnar4

1 that is proven most totally beyond any conceivable doubt. So I
2 think it just confuses the jury to add that nuance, but if you
3 insist on it, I will include it.

4 MR. JACOBS: We do not so insist. Thank you.

5 THE COURT: Let me get that language again. Hold on
6 just a minute.

7 MR. JACOBS: "The government must prove either that
8 the efforts to influence or prevent testimony occurred in the
9 Southern District of New York or that the official proceeding
10 was to be conducted here."

11 THE COURT: The official proceeding was to be
12 conducted in that district, right?

13 MR. JACOBS: Correct.

14 THE COURT: Anything else from the government on
15 number 11?

16 MR. JACOBS: No.

17 THE COURT: Anything from defense on number 11?

18 MR. DONALDSON: No.

19 MR. BURKE: On number 11 and number 12, I'm just
20 asking the Court if you could insert, I guess, the language
21 from the indictment which mentions the dates.

22 THE COURT: Yes. What are the dates?

23 MR. BURKE: From at least on or about December 3,
24 2009, up to and including in or about February 2010.

25 THE COURT: Give me the first date again.

Dbkgnar4

1 MR. BURKE: From December 3, 2009.

2 THE COURT: December 3, 2009.

3 MR. BURKE: February 2010.

4 THE COURT: And February 25, 2010.

5 MR. BURKE: February. There's no date in February,
6 just February 2010, whatever date they want.

7 THE COURT: What year are we talking about?

8 MR. WIBLE: The indictment gives the year
9 February 2010.

10 THE COURT: I will include that where I'm saying first
11 that the defendant you are considering, at or about sometime
12 between on or about December 3, 2009 and on or about February
13 2010. Very good.

14 Instruction number 12, anything from the government?

15 MR. JACOBS: No.

16 THE COURT: Anything from the defense?

17 MR. BURKE: It will be the same issue.

18 THE COURT: No, it's not necessary on 12. Twelve is
19 just saying that if they find conspiracy, the conspiracy would,
20 obviously, relate back to Count 11, the dates we just talked
21 about.

22 MR. BURKE: I'm sorry. You're saying the substantive
23 count, you're putting the timeframe in, but not the conspiracy?

24 THE COURT: The reason I'm not putting in anything
25 about the conspiracy, other than just saying this has to meet

Dbkgnar4

1 the elements of a conspiracy to commit the crime that I've just
2 instructed, and the crime I've just instructed has the dates.

3 MR. BURKE: Got it.

4 THE COURT: Instruction number 13, anything from the
5 government?

6 MR. JACOBS: No, your Honor. Thank you.

7 THE COURT: This one only relates to Mr. Jover
8 Naranjo.

9 MR. DONALDSON: There was a small change I considered.
10 I spoke to the government about it, and it relates to the first
11 sentence after the third element where it says "As to the first
12 element, the government need prove only that a single false
13 statement was made."

14 THE COURT: You need to speak a little louder.

15 MR. DONALDSON: I'm sorry. The first full sentence
16 after the third described element where it starts "As to the
17 first element."

18 THE COURT: Yes.

19 MR. DONALDSON: "The government need prove only that a
20 single false statement was made."

21 My recommendation was to finish that sentence "to a
22 government agent."

23 I don't know that it's absolutely necessary, but I
24 thought it would make more sense.

25 THE COURT: Yes. I have no problem with that. I will

Dbkgnar4

1 add that.

2 Turning to instruction number 14, anything from the
3 government?

4 MR. JACOBS: Yes. In the third paragraph beginning
5 "second," the predicate offenses for this charge are those in
6 Counts One, Two, and Five. The charges in Count Three and Four
7 are not predicates for aggravated identity theft.

8 THE COURT: Is that right? I didn't go back to look
9 at the indictment.

10 How can the conspiracy not be a predicate?

11 MR. JACOBS: The conspiracy to commit mail fraud is a
12 predicate, but the conspiracy to commit witness tampering under
13 1512(k), I don't think that statute is listed.

14 THE COURT: I see. We have to do that change, too.
15 Second, if the defendant you are considering used the
16 information to help commit the offenses -- which one are you
17 talking about now?

18 MR. JACOBS: Counts One and Two.

19 THE COURT: Mail fraud, conspiracy to commit mail
20 fraud. The reason I don't like it in this form is I don't like
21 referring back to counts. So mail fraud, conspiracy to commit
22 mail fraud.

23 MR. JACOBS: And false statements.

24 THE COURT: One or more of the mail fraud, substantive
25 mail fraud, conspiracy, or false statement offenses discussed

Dbkgnar4

1 above.

2 So, it would now read "Second, if the defendant that
3 you are considering used the information to help commit one or
4 more of the substantive mail fraud, mail fraud conspiracy, or
5 false statement offenses discussed above." Then we need to
6 change in the last full paragraph on that same page, "As to the
7 second element, it's not necessary that you find the means of
8 identification was used to transfer or possess in furtherance
9 of all of the crimes of substantive mail fraud, mail fraud
10 conspiracy, or false statements discussed above is sufficient,"
11 etc.

12 Anything on 14 from defense counsel?

13 MR. DONALDSON: No, your Honor.

14 MR. BURKE: No, your Honor.

15 THE COURT: And finally, the concluding instructions,
16 anything from the government on 15 and 16?

17 MR. JACOBS: No, your Honor.

18 THE COURT: Defense counsel.

19 MR. DONALDSON: No, your Honor.

20 MR. BURKE: Could I just have one moment?

21 THE COURT: Yes.

22 MR. BURKE: I'm jumping back to something we have
23 already done regarding witness credibility. We were wondering
24 if you can give a specific charge on inconsistent statements.

25 THE COURT: What charge do you have in mind?

Dbkgnar4

1 MR. BURKE: During the trial, some of the witnesses
2 testified differently than they did on other occasions. You
3 may take any inconsistency in their statements into account.

4 THE COURT: That's already in there. If you look at
5 the credibility charge, I ask them to consider inconsistency.
6 Let's look at that. Hang on a minute.

7 MR. BURKE: I think perhaps you're referring to the
8 second paragraph which has the phrase "was the witness
9 consistent or contradictory."

10 THE COURT: Yes.

11 MR. BURKE: I guess I'm just asking for a more
12 extensive charge on that point.

13 THE COURT: In the previous sentence, "How did the way
14 the witness testified on direct examination compare with how
15 that witness testified in cross examination or in prior
16 testimony?"

17 Do you want me to add that?

18 MR. DONALDSON: Yes.

19 MR. BURKE: Sure.

20 THE COURT: Then that's immediately followed by "Was
21 the witness consistent or contradictory?"

22 It picks up the point that you just referred to.

23 Is there anything else?

24 MR. JACOBS: Just a small point.

25 THE COURT: No.

Dbkgnar4

1 From defense counsel.

2 MR. DONALDSON: No, I was standing with Mr. Burke.

3 THE COURT: Go ahead.

4 MR. JACOBS: Given Mr. Burke's request for the dates
5 we had requested a charge in our request on variance of dates
6 and how the law requires only a substantial similarity between
7 the dates and months alleged in the indictment.

8 THE COURT: Are you alleging any dates that are
9 outside those elements because I already say at any time within
10 those limits.

11 MR. JACOBS: Correct. I think as to the witness
12 tampering, there's witness tampering that occurs, the evidence
13 shows, between those dates alleged, but there's also efforts to
14 hide and instruct to lie that perhaps defense could argue
15 occurred in November rather than December or October rather
16 than December.

17 To the extent they seek to make that argument, we
18 think an instruction that the precise month is not something we
19 need to prove. It could be useful.

20 I don't know whether they intend to make that
21 argument.

22 THE COURT: If this comes up during summation, I will
23 consider it. At this point, I think it would be surplusage.
24 We do say "at or about" or "in or around" or other variations
25 of that.

Dbkgnar4

1 Anything else whatsoever on the charge?

2 MR. BURKE: Not from Mr. Naranjo.

3 MR. DONALDSON: No, your Honor, no.

4 THE COURT: Nothing.

5 MR. JACOBS: No.

6 THE COURT: Any problems with the verdict?

7 MR. DONALDSON: Your Honor, throughout all of my
8 trials, I've made this one request. It's only been granted
9 once I think in state court, and I keep asking. Hopefully, it
10 will be granted again today.

11 I normally request that the verdict sheet read not
12 guilty first and then guilty. It's my belief that because we
13 are in an innocent-until-proven-guilty society, that not guilty
14 should be first and guilty should be second. It hasn't
15 happened yet, but I'm trying.

16 THE COURT: Aside from the fact that this is, again,
17 an order hallowed by history, but more relevantly, it really
18 corresponds to the way the jury has to assess this.

19 Not guilty comes because you have made a determination
20 that the government has not established guilt, so you first
21 consider the government's evidence. And if you find it has
22 established guilt beyond a reasonable doubt, you check guilty.
23 Otherwise, you check not guilty because of the presumption of
24 innocence.

25 In addition to being the familiar way of doing it, I

Dbkgnar4

1 think it really corresponds to the way that the jury is asked
2 to view and deliberate about each and every charge, so I will
3 leave it as is.

4 Anything else?

5 MR. DONALDSON: No.

6 MR. BURKE: No.

7 MR. JACOBS: No. Thank you.

8 THE COURT: Very good. So thank you all. We will
9 make those changes.

10 I will have my law clerk email you the final version,
11 if you want to give him your emails right after I leave in a
12 minute. I have no problem with counsel referring to my
13 instructions during summation. Just be sure you quote them
14 right.

15 To remind everyone, the government and defense counsel
16 each have one hour on their opening summation and the
17 government has 20 minutes on rebuttal. Very good.

18 See you tomorrow.

19 (Adjourned to November 21, 2013 at 9:00 a.m.)

20 * * *

INDEX OF EXAMINATION

Examination of: Page

MICHELLE LETTIRE

Cross By Mr. Donaldson 382

Cross By Mr. Burke 411

Redirect By Mr. Jacobs 416

JUAN CARLOS RODRIGUEZ

Direct By Mr. Jacobs 420

Cross By Mr. Burke 427

Cross By Mr. Donaldson 447

DAVID ROSENTHAL

Direct By Mr. Wible 450

Cross By Mr. Donaldson 468

GOVERNMENT EXHIBITS

Exhibit No. Received

801-853, 901-903, 1001 419

401-436 427

1003 482